

UNION PACIFIC RAILROAD
101 North Wacker Drive, Room 1920
Chicago, Illinois 60606-1718

P 312 777 2055
F 877.213 4433
mackshumate@up.com

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OCT - 3 2011

**SURFACE
TRANSPORTATION BOARD**

Mack H. Shumate, Jr.
Senior General Attorney, Law Department

October 3, 2011

OCT 3 2011

VIA OVERNIGHT DELIVERY

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

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23/026

**COMBINED PETITION FOR EXEMPTION
UNDER 49 U.S.C. § 10502 AND APPLICABLE RULES**

Docket No. AB-33 (Sub-No. 300X)

**UNION PACIFIC RAILROAD COMPANY
PETITION FOR ABANDONMENT AND DISCONTINUANCE OF
SERVICE AND TRackage RIGHTS
IN POTTAWATTAMIE COUNTY, IOWA
(CHICAGO AND GREAT WESTERN INDUSTRIAL LEAD)**

Docket No. AB-414 (Sub-No. 6X)

23/027

**IOWA INTERSTATE RAILROAD, LTD.
PETITION FOR DISCONTINUANCE OF SERVICE AND TRackage RIGHTS
IN POTTAWATTAMIE COUNTY, IOWA
(CHICAGO AND GREAT WESTERN INDUSTRIAL LEAD)**

**REQUEST UNDER 49 U.S.C. § 10502 TO EXEMPT THE PROPOSED
ABANDONMENT FROM THE OFFER OF FINANCIAL
ASSISTANCE PROVISIONS OF 49 U.S.C. § 10904
AND THE PUBLIC USE PROVISIONS OF 49 U.S.C. § 10905
FOR REASONS OF SHIPPER NEED**

**SURFACE
TRANSPORTATION BOARD**

OCT - 3 2011

FILED

Dear Ms. Brown:

Pursuant to 49 U.S.C. §10502, Union Pacific Railroad Company ("UP") and Iowa Interstate Railroad, Ltd. ("IAIS") hereby submit an original and ten (10) copies of this Combined Petition for Exemption, with Verification, to abandon the above-referenced UP rail line and UP Connector track and discontinuance of service of UP's overhead trackage rights on the IAIS Line and the discontinuance of IAIS' trackage rights over the Line and the UP Connector Track. The Certificate of Service and Publication pursuant to 49 C.F.R. §1152.60(d) and 49 C.F.R. §1105.12

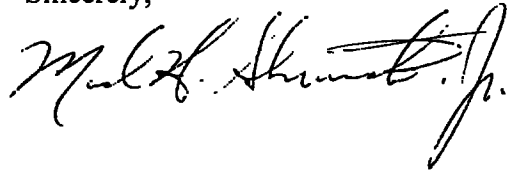


The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
October 3, 2011
Page 2

is attached to the petition. Also enclosed is a draft Federal Register notice pursuant to 49 C.F.R. §1152.60(c). UP and IAIS are also seeking under 49 U.S.C. § 10502 exemption from the offer of Financial Assistance Provisions of 49 U.S.C. § 10904 and the Public Use Provisions of 49 U.S.C. § 10905 for reasons of overriding reasons of shipper need.

Please file the Combined Petition for Exemption in Docket No. AB-33 (Sub-No. 300X) and AB-414 (Sub-No. 6X). Enclosed is a credit authorization voucher in the amount of \$9,300.00 for the filing fee.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael H. Shuman, Jr.", written in a cursive style.

Enclosures

cc: All Concerned Parties

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•
Military Surface Deployment & Distribution Command
Transportation Engineering Agency
ATTN: SDTE - SA
(Railroads For National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357

U.S. Department of the Interior
National Park Service
Legislative & Congressional Affairs Office
1849 C Street, N.W., Room 3309
Washington, DC 20240

U.S. Department of Agriculture
Chief of the Forest Service
4th Floor N.W., Auditors Building
14th Street & Independence Ave., S.W.
Washington, DC 20250

Iowa Department of Management
State Capital Building, Room G-12
1007 E. Grand Avenue
Des Moines, IA 50319

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 300X)

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FOR REASONS OF SHIPPER NEED**

**UNION PACIFIC RAILROAD COMPANY
Mack H. Shumate, Jr.
Senior General Attorney
101 North Wacker Drive, Suite 1920
Chicago, IL 60606
(312) 777-2055
(312) 777-2065 FAX
Email: mackshumate@up.com**

**Lanny M. Van Daele
Corporate Counsel
Iowa Interstate Railroad, Ltd.
5900 6th S.W.
Cedar Rapids, IA 52404
(319) 298-5405
(319) 298-5456 FAX
Email: lmvandaele@iaisrr.com**

Dated and filed: October 3, 2011

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AND THE PUBLIC USE PROVISIONS OF 49 U.S.C. § 10905
FOR REASONS OF SHIPPER NEED**

I. Introduction

Union Pacific Railroad Company ("UP") and Iowa Interstate Railroad, Ltd. ("IAIS") file this combined petition for exemption from the requirements of 49 U.S.C. §10903 in accordance with 49 U.S.C. §10502, the applicable Rules at 49 C.F.R. §1121 and 49 C.F.R. §1152, and the applicable Special Rules at 49 C.F.R. §1152.60. This Combined Petition for Exemption seeks an exempt abandonment and discontinuance for the remaining portion of the Chicago and Great Western Industrial Lead, an isolated

line in an urban industrial area that is less than one-half mile in length (0.45 miles) from Milepost 503.6 to Milepost 504.05, in the City of Council Bluffs, Pottawattamie County, Iowa (the "Line") as depicted in Red on **Attachment No. 1** which is attached hereto and hereby made a part hereof including the abandonment and discontinuance of the connecting track from UP Milepost 503.85 on the Line to the end of the IAIS' Line, as hereinafter defined, at IAIS Milepost 486.8 on the IAIS Line, a distance of 400 ft. (the "UP Connector Track") as depicted in brown on said **Attachment No. 1**.¹ As part of this matter, IAIS proposes to discontinue its trackage rights over the Line and the UP Connector Track (the "IAIS Trackage Rights")² and UP proposes to discontinue its overhead trackage rights over the IAIS Line from Milepost 486.80 to Milepost 488.00 (the "UP Overhead Trackage Rights"). The IAIS Line is that portion of the IAIS' mainline track from Milepost 486.80 to Milepost 488.00 a distance of 1.2 miles (the "IAIS Line").³

The Line, the UP Connector Track, the IAIS Trackage Rights, the UP Overhead Trackage Rights and the IAIS Line are all located in the City of Council Bluffs, Pottawattamie County, Iowa. The Line and the UP Connector Line traverse U.S. Postal

¹ As depicted on **Attachment No. 2** which is attached hereto and hereby made a part hereof, only .45 miles of the former Chicago and Great Western Industrial Lead ("CGW Line") remains. The portion of the CGW Line to the southeast of the Line, marked in Green, was abandoned in 1971. The portion of the CGW Line to the northwest of the Line, marked in blue, was abandoned in 2000. The only portion of the CGW Line remaining, marked in red, is the de minimus .45 mile island of remaining trackage which is enveloped by the operations of both Red Giant and Midwest Walnut.

² UP and IAIS filed the trackage rights agreement covering IAIS' trackage rights on the Line and the UP Connector Track with the Board in *Iowa Interstate Railroad, Ltd. and Union Pacific Railroad Co.—Exemption—Joint Relocation Project in Council Bluffs, Pottawattamie County, IA*, STB Finance Docket No. 33883, filed June 12, 2000.

³ The IAIS' Line will continue to have the existing direct physical connection to the Red Giant/Midwest Walnut Industry Track after transfer of ownership and control of the Line and the UP Connector Track to Red Giant and subject to the permanent easement rights of Midwest Walnut and the terms of the Operating Agreement between Midwest Walnut and Red Giant. IAIS will continue to serve both Red Giant and Midwest Walnut pursuant to Railroad Industry Track Agreements.

Service Zip Code 51503 and the IAIS Line traverses U.S. Postal Service Zip Code 51503 and 51501.

There are two shippers (the "Shippers") on the Line, Red Giant Oil Company ("Red Giant") and Midwest Walnut Company of Iowa ("Midwest Walnut"). The current Red Giant and Midwest Walnut rail shipping operations utilize the entire Line and the UP Connector Track. A series of disputes and claims concerning rail service to the shippers has been resolved by a series of mutual agreements among UP, IAIS, Red Giant and Midwest Walnut (the "Overall Settlement Agreements"). The Overall Settlement Agreements provide in part for the sale of the Line and the UP Connector Track to Red Giant subject to a permanent access easement thereover for Midwest Walnut so (1) that Red Giant and Midwest Walnut will have permanent direct access to IAIS, the common carrier railroad that currently serves them; (2) that Red Giant and Midwest Walnut will own, control and use their respective interests to the Line and the UP Connector Track as a typical shipper owned industrial lead, in this case, the "Red Giant/Midwest Walnut Industry Track"; and (3) that IAIS will serve both Red Giant and Midwest Walnut pursuant to the Railroad Industry Track Agreements each shipper has entered into with IAIS.

The specific agreements included in the Overall Settlement Agreements include, the Settlement Agreement-Amended (the "Settlement Agreement"), dated October 16, 2009 between UP, Red Giant and Midwest Walnut attached hereto as **Attachment No. 3** and hereby made a part hereof, the Mutual Release of All Claims (the "Mutual Release"), dated October 16, 2009 between UP, Red Giant and Midwest Walnut attached hereto as **Attachment No. 4** and hereby made a part hereof and the

Operating Agreement-Amended (the "Operating Agreement") between Red Giant and Midwest Walnut which covers the rights and obligations of Red Giant and Midwest Walnut for the shared use of the Line and UP Connector Track, attached hereto as **Attachment No. 5** and hereby made a part hereof.

The continued rail service to be provided by IAIS through IAIS' direct common carrier connection with the Red Giant/Midwest Walnut Industrial Lead (the former UP Connector Track and the Line) will be through the utilization of the Railroad Industry Track Agreement dated August 26, 2011 between IAIS and Red Giant, attached hereto as **Attachment No. 6** and hereby made a part hereof and the Railroad Industry Track Agreement dated August 24, 2011 between IAIS and Midwest Walnut, attached hereto as **Attachment No. 7** and hereby made a part hereof, both being collectively referred to herein as (the "RITAs"). The use of RITA's is the standard practice in the freight railroad industry for serving shippers on shipper owned or controlled property located adjacent to a railroad's line.

Both Midwest Walnut and Red Giant have indicated their support for this Combined Petition for Exemption by letters dated July 13, 2011 and August 23, 2011, respectively. Copies of both Midwest Walnut's and Red Giant's letters of support are attached hereto as **Attachment No. 8** and **Attachment No. 9**, respectively and are hereby made a part hereof.

It is important to note that neither Red Giant nor Midwest Walnut desire to become nor will they become common carriers by rail as a result of the proposed abandonment and discontinuances and the closings under the transactions covered by the Overall Settlement Agreements including the Settlement Agreement, Mutual

Release and Operating Agreement. While the Settlement Agreement originally contemplated IAIS retaining common carrier control of the UP Connector Track and the Line, the creation of the Red Giant/Midwest Walnut Industrial Track coupled with the RITA's gives the Shippers the control of the Red Giant/Midwest Walnut Industrial Track they desire without sacrificing their direct common carrier connection and service with IAIS.

Critical to the implementation of the Overall Settlement Agreements is the Board's concurrence with the objectives of this Combined Petition for Exemption as outlined in the first paragraph of this Introduction. The subject matter of this Combined Petition for Exemption is very similar to the exempt abandonment and discontinuance of Service in STB Docket No. AB-33 (Sub-No. 242X) Union Pacific Railroad Company ("UP") Abandonment Exemption in Montgomery County, Kansas and the embraced matter in STB Docket No. AB-471 (Sub. No. 7X), South Kansas and Oklahoma Railroad, Inc. ("SKO") Discontinuance of Service Exemption in Montgomery County, Kansas (collectively, the "Coffeyville Refinery Matter").

In the Coffeyville Refinery Matter, the Board by decision with a service date of July 27, 2006 authorized in part the abandonment of UP's railroad easement within the Coffeyville Refinery on track which was operated on by SKO pursuant to an operating lease between UP and SKO. In the embraced portion of the matter, the Board authorized the discontinuance of operations by SKO on the same track. This decision permitted the track and right-of-way to become part of the Coffeyville Refinery's privately owned and controlled industrial trackage. The Coffeyville Refinery Matter like the subject matter of this Combined Petition for Exemption was a transaction of limited

scope and was not an abuse of market power in that it was accomplished with the full consent and cooperation of the shipper, the Coffeyville Refinery, as is the current situation with Red Giant and Midwest Walnut.

II. Petitioners' Background and Representatives

UP has rail operations in the States of Arizona, Arkansas, Iowa, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming. The name, address and telephone number of UP's representative is listed below:

Mack H. Shumate, Jr.
Senior General Attorney
101 N. Wacker Drive
Room 1920
Chicago, IL 60606
(312) 777-2055
(312) 777-2065 (FAX)
Email: mackshumate@up.com

IAIS has rail operations in the states of Illinois and Iowa. The name, address and telephone number of IAIS' representative is listed below:

Lanny M. Van Daele
Corporate Counsel
Iowa Interstate Railroad, Ltd.
5900 6th S.W.
Cedar Rapids, IA 52404
(319) 298-5405
(319) 298-5456 FAX
Email: lmvandaele@iaisrr.com

III. Line Description, Zip Code Information, and Map

The proposed action involves (1) UP's request for authority to abandon the remaining portion of UP's Chicago and Great Western Industrial Lead or the Line; (2) UP's request for authority to discontinue UP's Overhead Trackage Rights over IAIS'

Line; (3) UP's request for authority to abandon UP's operation on the UP Connector Track; and (4) IAIS' request for authority to discontinue IAIS' Trackage Rights over the UP Connector Track and the Line.

The Line proposed for abandonment extends from Milepost 503.6 to Milepost 504.05, a distance of 0.45 miles, the UP Connector Track begins at Milepost 503.85 on the Line and extends to Milepost 486.8 on the IAIS Line, a distance of approximately 400 feet, the UP's Overhead Trackage Rights on the IAIS Line extends from Milepost 488.0 to Milepost 486.8 on the IAIS Line, a distance of 1.2 miles and IAIS' Trackage Rights over the UP Connector Line and the Line, a distance of 0.45 miles over the Line and approximately 400 feet over the UP Connector Track, all being in the City of Council Bluffs, Pottawattamie County, Iowa. The map depicting the Line, the UP Connector Track, the IAIS' Line and the location of the IAIS Trackage Rights and UP Overhead Trackage Rights is attached hereto as **Attachment No. 1**.

The Line was originally constructed in 1901 by the Mason City and Fort Dodge Railroad. Its track, which is maintained as excepted track, contains 85-pound jointed rail, laid second-hand in 1961. The UP Connector Track was constructed in 2000. The Line and the UP Connector Track are located on property which is currently under a purchase arrangement under which UP and Midwest Walnut are obligated to sell required property interests and Red Giant is obligated to purchase the Line and the UP Connector Track. (See Settlement Agreement, **Attachment No. 3**, Mutual Release, **Attachment No. 4** and Operating Agreement, **Attachment No. 5**).

UP granted IAIS, the IAIS Trackage Rights that permits IAIS to operate over the UP Connector Track and the Line and serve Red Giant and Midwest Walnut thereon.⁴ During the past four (4) years, IAIS has been the sole common carrier rail service provider to and from the Line and the UP Connector Track and has handled all of the rail traffic for Red Giant and Midwest Walnut, the only shippers on the Line. There are no other shippers on the Line and no passenger service or overhead traffic has used the Line in the past two years.

Neither the Line nor the UP Connector Track contains any federally granted right-of-way or reversionary property. The Line and the UP Connector Track traverse U.S. Postal Service zip code 51503. The IAIS Line traverses U.S. Postal Zip Codes 51503 and 51501.

A map indicating the location of the Line and UP's Connector Track is attached hereto as **Attachment No. 1**. Other rail lines in the area, principal highways, and other roads are also shown on **Attachment No. 1**. Neither the Line nor the UP Connector Track have any bridges that are 50 years old or older. No stations will be closed as a result of UP's proposed abandonment of the operations over the Line and the UP Connector Track or UP's proposed discontinuance of the UP Overhead Trackage Rights over the IAIS Line.

Following UP's abandonment and discontinuance of operations on the Line and the UP Connector Track and IAIS' discontinuance of IAIS' trackage rights on Line and the UP Connector Track and UP's discontinuance of the UP Overhead Trackage Rights over the IAIS Line, Red Giant will close the acquisition with UP and Midwest Walnut of

⁴ See *Iowa Interstate Railroad, Ltd. and Union Pacific Railroad Co.—Joint Relocation Project Exemption in Council Bluffs, Pottawattamie County*, STB Docket No. 33883, STB served June 30, 2000.

the real estate and track structure which makes up the Line and the UP Connector Track in accordance with the Settlement Agreement. (See **Attachment No. 3.**) IAIS will continue to serve Red Giant and Midwest Walnut via the IAIS Line's direct connection to the Red Giant/Midwest Walnut Industry Track and the RITA's with both Red Giant and Midwest Walnut. (See **Attachment No. 6 and Attachment No. 7.**)

Following UP's abandonment and discontinuance of operations on the Line and the UP Connector Track and discontinuance of the IAIS' trackage rights on the Line and the UP Connector Track and discontinuance of the UP Overhead Trackage Rights over the IAIS Line, all shippers in the area, both Red Giant and Midwest Walnut, will continue to receive rail service by IAIS via the IAIS Line, which connects to the Red Giant/Midwest Walnut Industry Track (the former UP Connector Track and the Line) as depicted on **Attachment No. 1.**

IV. Shipper Information

No shippers will be affected by the proposed (a) abandonment and discontinuance of the Line and the UP Connector Track, (b) the discontinuance of IAIS' trackage rights on the Line and the UP Connector Track, and (c) the discontinuance of the UP Overhead Trackage Rights on the IAIS Line. During the past four (4) years, IAIS has been the sole rail service provider to and from the UP Connector Track and the Line. There are two (2) shippers on the Line, Red Giant and Midwest Walnut. Midwest Walnut last used rail service on the Line by receiving six (6) railcars in 2010 and anticipates similar traffic moves in the future. Red Giant has used rail service on the Line in 2009, 2010 and 2011 for both inbound and outbound carloads of petroleum products. No other customers have received rail service via the Line during this time

period. It is impossible to have overhead traffic on the Line in that the portions of Chicago and Great Western Industrial Lead to the south and north of the Line were previously abandoned in 1971 and 2000 respectively. (See **Attachment No. 2.**)

Red Giant's shipping profile is as follows:

Red Giant Oil Co.
1701 South 3rd Street
Council Bluffs, IA 51503

Red Giant used IAIS rail service on the Line and the UP Connector Track in 2009, 2010 and 2011 for both inbound and outbound carloads of petroleum products and will continue to receive such rail service from IAIS.

IAIS will provide direct rail common carrier service to both Shippers on the Line from IAIS' Line following the Board's approval of the proposed abandonment and discontinuance authority. The proposed abandonment and trackage rights discontinuances coupled with the closing of the sale of the Line and the UP Connector Track to Red Giant subject to the permanent easement access for Midwest Walnut thereover pursuant to the Overall Settlement Agreements will give Red Giant and Midwest Walnut more control over their respective industrial facilities with common carrier rail service being provided by IAIS to the Shippers via the connection of the IAIS Line to the Red Giant/Midwest Walnut Industry Track. IAIS' Railroad Industry Track Agreements or RITA's with both Red Giant and Midwest Walnut provide IAIS direct physical access from the IAIS Line to both Red Giant and Midwest Walnut via the Red Giant/Midwest Walnut Industry Track. Rail service will continue to be available to any potential customers in the area via the IAIS Line.

Midwest Walnut's shipping profile is as follows:

Midwest Walnut Company
1914 Tostevin
Council Bluffs, IA 51503

Midwest Walnut last used IAIS rail services on the Line and the UP Connector Track by receiving six (6) rail cars in 2010 and anticipates similar traffic moves in the future.

Both Midwest Walnut and Red Giant support this Combined Petition for Exemption and have provided letters to that effect. Copies of said shipper letters of support are attached hereto as **Attachment No. 8** and **Attachment No. 9** respectively.

No other customers have received rail service via the Line during this time period. It is impossible to have overhead traffic on the Line in that the portions of Chicago and Great Western Industrial Lead to the south and north of the Line were previously abandoned in 2000 and 1971 respectively. (See **Attachment No. 2.**)

There are no customers on the IAIS Line that will be affected by UP's discontinuance of trackage rights over the IAIS Line. UP does not serve any customers on the IAIS Line, and IAIS will continue to serve customers on the IAIS Line following UP's discontinuance of its overhead trackage rights on the IAIS Line.

V. Reasons for the UP's Abandonment and Discontinuance of Operations on the Line and the UP Connector Track, IAIS' Discontinuance of IAIS' Trackage Rights on the Line and the UP Connector Track and Discontinuance of UP's Overhead Trackage Rights on the IAIS Line

The proposed UP abandonment and discontinuance of operations on the Line and the UP Connector Track and IAIS' discontinuance of IAIS' trackage rights on the Line and the UP Connector Track and UP's discontinuance of the UP Overhead Trackage Rights on the IAIS Line will permit UP, Red Giant and Midwest Walnut to

complete the series of mutually agreed transactions covered by the Overall Settlement Agreements while maintaining common carrier rail service to the Shippers on the Line. In order for UP to give Red Giant control over real estate and trackage on the Line and the UP Connector Track, UP and IAIS must first receive authority to abandon and discontinue their respective common carrier authority over the Line and the UP Connector Track. Although the Line and the UP Connector Track will no longer be subject to Board authority following UP's abandonment and discontinuance of operations on the Line and the UP Connector Track and IAIS' discontinuance of trackage rights on the Line and the UP Connector Track, IAIS will continue to serve Red Giant and Midwest Walnut under the RITA's from IAIS' Line which will continue to have the direct connection to Red Giant and Midwest Walnut via the Red Giant/Midwest Walnut Industry Track.

VI. Reasonable Alternatives and Request for Exemption From Offer of Financial Assistance Provisions of 49 U.S.C. § 10904 and Public Use Provisions of 49 U.S.C. § 10905

The Line proposed for abandonment is not suitable for other public purposes including roads or highways, mass transportation, energy production or transmission, or recreational use, as the real property upon which the Line and the UP Connector Track is located is contractually obligated to be transferred by UP to Red Giant and become part of Red Giant's industrial facility along with permanent easement access thereover to the IAIS Line for Midwest Walnut pursuant to the Overall Settlement Agreements. IAIS will continue to serve Red Giant and Midwest Walnut through the direct connection of the IAIS Line to the Red Giant/Midwest Walnut Industry Track which will consist of the former UP Connector Track and the Line. Moreover, the Line and the UP Connector Track are located in the City of Council Bluffs, Iowa which is already served

by numerous local streets and interstate highways, other UP and IAIS lines, as well as lines of other railroads, including BNSF Railway Co. and Canadian National Railway Co. The relief requested in this Petition will enable Red Giant and Midwest Walnut (a) to finalize the transactions under the Overall Settlement Agreements for the acquisitions of the real property interests which make up the UP Connector Track and the Line, and thereby creating the Red Giant/Midwest Walnut Industry Track; (b) to modify and expand their operations as they deem necessary subject to and in accordance with the Overall Settlement Agreements; and (c) to be assured of continued rail service to both Red Giant and Midwest Walnut by IAIS pursuant to the RITA's and the direct connection of the IAIS Line to the Red Giant/Midwest Walnut Industry Track.

The only current rail shipments that utilize the Line and the UP Connector Track are those rail cars handled by IAIS that either originate or terminate at Red Giant or Midwest Walnut. There is no overhead traffic and no passenger service on the Line or the UP Connector Track. Based upon information in UP's possession neither the Line nor the UP Connector Track contains any federally granted right-of-way and none of the adjacent property is reversionary. Any documentation in UP's possession will be made available promptly to those requesting it.

The IAIS Line will remain the active rail line it is today and as such is not subject to conversion for alternative uses.

It is important to note that neither Red Giant nor Midwest Walnut desire to become nor will they become common carriers by rail as a result of the proposed abandonment and discontinuances and the closings under the transactions covered by

the Overall Settlement Agreements including the Settlement Agreement, Mutual Release and Operating Agreement.

UP and IAIS are of the reasoned opinion that exemption under 49 U.S.C. § 10502 from the Offer of Financial Assistance Provisions of § 10904 is warranted in that there is an overriding shipper need that will be served by authorizing the proposed abandonment and discontinuances in light of the proposed continued rail service to the shippers on the Line via the direct connection with the IAIS Line. The two shippers on the Line, Red Giant and Midwest Walnut as the adjacent landowners along the entire Line desire to obtain specified ownership, control and use of the Line so as to incorporate the Line's right-of-way and portions of the track structure thereon into their industrial operations which envelop the Line and the UP Connector Track. To accomplish this objective, both Red Giant Oil and Midwest Walnut have entered into the aforesaid Overall Settlement Agreements consisting of the Settlement Agreement, Mutual Release and the Operating Agreement between themselves and UP as applicable and the RITA's with IAIS to assure continued access to the National Rail System.⁵ In that the UP Connector Track and the Line will become the Red Giant/Midwest Walnut Industry Track and remain fully utilized by the Shippers as owners thereof and remain rail served by the direct connection of IAIS to said Red Giant/Midwest Walnut Industry Track pursuant to the RITA's, there is no practical

⁵ The abandonment and discontinuance authority originally sought by UP and IAIS with regard to the Line in AB-33 (Sub-No. 274X) and AB-414 (Sub-No. 4X) was filed with the Board on August 20, 2008. The requested abandonment and discontinuance authority was rejected by the Board because (a) the petitioners did not provide any details of the agreements with Red Giant and Midwest Walnut the only shippers on the Line regarding the proposed future rail service arrangements for said Shippers and (b) the petitioners did not provide statements from Midwest Walnut and Red Giant that reflected their acquiescence to the Combined Petition. Red Giant and Midwest Walnut have now reached agreement among themselves and with the UP and IAIS and now unanimously support this current proposed Combined Petition. All relevant agreements between the various parties covering the proposed future rail service arrangements for Red Giant and Midwest Walnut are disclosed and attached to this Combined Petition.

potential, desire nor need for either the UP Connector Track or the Line to be operated by any person that would seek to pursue an Offer of Financial Assistance under 49 U.S.C. § 10904 nor would the UP Connector Track or Line be available for acquisition by a public entity under the Public Use Provisions of 49 U.S.C. § 10905.

There are no other connections to the Line or the UP Connector Track by other rail carriers other than IAIS.

VII. The Exemption Standards Have Been Met

Abandonment of rail lines and trackage rights discontinuances require Board authorization and approval pursuant to 49 U.S.C. §10903. However, 49 U.S.C. §10502 requires the Board to exempt transactions where it finds: (1) continued regulation is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. §10101; and (2) either the transaction is of limited scope or Board regulation is not necessary to protect shippers such as, Red Giant and Midwest Walnut, from an abuse of market power. The proposed abandonment and discontinuances of trackage rights clearly satisfy these exemption standards.

Detailed scrutiny by the Board under 49 U.S.C. §10903 is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. §10101. An exemption will minimize UP's and IAIS' administrative costs and expenses that would otherwise be associated with pursuing the proposed abandonment and trackage rights discontinuances through a full application proceeding. An exemption will expedite regulatory action and will reduce regulatory barriers to abandonment and discontinuances, consistent with Sections 10101(2) and (7). An exemption will also foster sound economic conditions in the transportation industry, consistent with Section 10101(5).

Additionally, the proposed abandonment and discontinuances are clearly transactions of "limited scope." The Line and the UP Connector Track, which are proposed for abandonment, are only 0.45 miles and 400 ft. long respectively and serve only two (2) shippers—Red Giant and Midwest Walnut. The Line and the Connector Track are very short lengths of track and the proposed abandonment and discontinuances are of very limited scope and clearly do not represent an abuse of market power by the UP and IAIS. On the contrary, the combination of the Overall Settlement Agreements and the objectives of this Combined Petition for Exemption demonstrate the commitment of UP, IAIS, Red Giant and Midwest Walnut to reach a mutually acceptable agreement that preserves common carrier service by rail to the Shippers with enhanced control and utilization for the Shipper's of their right-of-way within the Shipper's industrial facilities. See, *Village of Palestine v. ICC*, C.A.D.C. 1991, 936 F.2d 1335.

Regulation of this proposed abandonment and the related discontinuances of trackage rights are not needed to protect Shippers from an abuse of market power. To the contrary, Red Giant and Midwest Walnut will continue to receive direct rail service from IAIS following the proposed abandonment and discontinuances and will retain other existing transportation options and alternatives. Red Giant and Midwest Walnut will gain full unencumbered use of their property, to better utilize the common carrier service provided by IAIS pursuant to the RITA's. Both Midwest Walnut and Red Giant have indicated their support for this Combined Petition for Exemption by letters dated July 13, 2011 and August 23, 2011, respectively. Copies of both Midwest Walnut's and

Red Giant's letters of support are attached hereto as **Attachment No. 8** and **Attachment No. 9**.

VIII. Land Area, Federal Grant Information, and Public Use

The Line's right-of-way is approximately 50 feet wide, and its topography is level. Based upon information in UP's possession, the Line and the UP Connector Track contains no federally granted right-of-way and none of the adjacent property is reversionary. UP will make any documentation in its possession promptly available to those requesting it.

The Line and the UP Connector Track, which is proposed for abandonment, is not suitable for other public purposes including roads or highways, mass transportation, energy production or transmission, or recreational use, as it is located on private property in an urban industrial environment and IAIS will continue to use it to provide rail service pursuant to RITA's with Red Giant and Midwest Walnut. Moreover, the Line and the UP Connector Track lie in the City of Council Bluffs, Iowa which is already served by numerous local streets and interstate highways, other UP and IAIS lines, as well as lines of other railroads, including BNSF Railway Company and Canadian National Railway Company. The abandonment and discontinuance of trackage rights associated with the Line, the UP Connector Track and the IAIS Line will enable Red Giant and Midwest Walnut to modify and expand their business operations in accordance with the Overall Settlement Agreements.

IX. Labor.

UP and IAIS agree to the labor protection conditions imposed in abandonment proceedings as prescribed in Oregon Short Line R. Co. – Abandonment – Goshen, 360 ICC 91 (1979).

X. Environmental and Historic Report

The required environmental and historic information is contained in the combined Environmental and Historic Report (the "CEHR"), which IAIS and UP filed on June 29, 2011. A copy of the CEHR transmittal letter is attached hereto as **Attachment No. 10** and is hereby made a part hereof. The original of the CEHR was efiled with the Honorable Cynthia T. Brown, Chief, Section of Administration on June 29, 2011.

Subsequent to the filing of the CEHR only one additional letter has been received by UP from any federal, state or local governmental agency concerning any conditions to be imposed on the proposed abandonment. Attached hereto as **Attachment No. 11** is a letter from the Natural Resources Conservation Service ("NRCS") of the United States Department of Agriculture, dated July 18, 2011, which provides that the NRCS has no concerns or comments regarding the matter at this time.

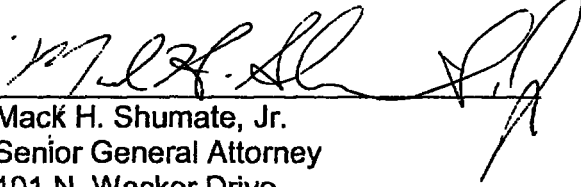
WHEREFORE, Union Pacific Railroad Company respectfully requests that the Board find that the proposed transactions under the Overall Settlement Agreements in conjunction with this Combined Petition for Exemption is of very limited scope and not an abuse of market power by the UP and IAIS and issue a decision (1) exempting the proposed abandonment of the Line and the UP Connector Track and the discontinuance of the UP's Overhead Trackage Rights over the IAIS' Line and the discontinuance of IAIS' Trackage Rights over the Line and the UP Connector Track from the provisions of 49 U.S.C. §10903 and direct that the exemptions be effective on the date of the Board's decision, (2) granting that the exemption under 49 U.S.C. § 10502 from the Offer of Financial Assistance Provisions of 49 U.S.C. § 10904 and from the Public Use Provisions of 49 U.S.C. § 10905 is warranted in that there is an

overriding shipper need for the right-of-way which makes up the Line and the UP Connector Track and that said Shippers will remain rail served by the common carrier operation of IAIS from the IAIS Line to the Red Giant/Midwest Walnut Industry Track under the related RITA's.

Dated this 3rd day of October, 2011.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY



Mack H. Shumate, Jr.
Senior General Attorney
101 N. Wacker Drive
Room 1920
Chicago, IL 60606
(312) 777-2055
(312) 777-2065 (FAX)
Email: mackshumate@up.com

IOWA INTERSTATE RAILROAD, LTD.



Larry M. Van Daele
Corporate Counsel
Iowa Interstate Railroad, Ltd.
5900 6th S.W.
Cedar Rapids, IA 52404
(319) 298-5405
(319) 298-5456 FAX
Email: lmvandaele@iaisrr.com

VERIFICATION

STATE OF NEBRASKA)

COUNTY OF DOUGLAS)

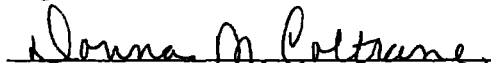
) ss.
)

I, RAYMOND E ALLAMONG, JR., Senior Manager Rail Line Planning of Union Pacific Railroad Company, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing document and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Union Pacific Railroad Company.

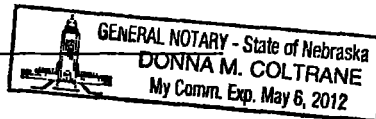
Dated at Omaha, Nebraska, this 30th day of August, 2011.


Raymond E. Allamong, Jr.

SUBSCRIBED AND SWORN TO
before me this 30th day of
August, 2011.


Notary Public

My Commission expires. _____




VERIFICATION

STATE OF IOWA)
) ss:
COUNTY OF LINN)

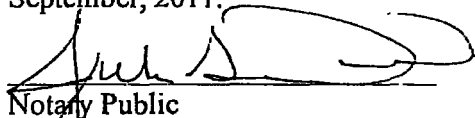
I, Michael Burkart, Vice President – Chief Operating Officer of the Iowa Interstate Railroad, Ltd., declare under penalty of perjury and under the laws of the United States of America that I have read the foregoing document and that its assertions are true and correct to the best of my knowledge, information, and belief. I further declare that I am qualified and authorized to submit this verification on behalf of the Iowa Interstate Railroad, Ltd.

Dated at Cedar Rapids, Iowa this 27 day of September, 2011.



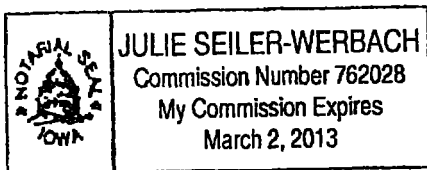
Michael Burkart, V.P. – Chief Operating Officer

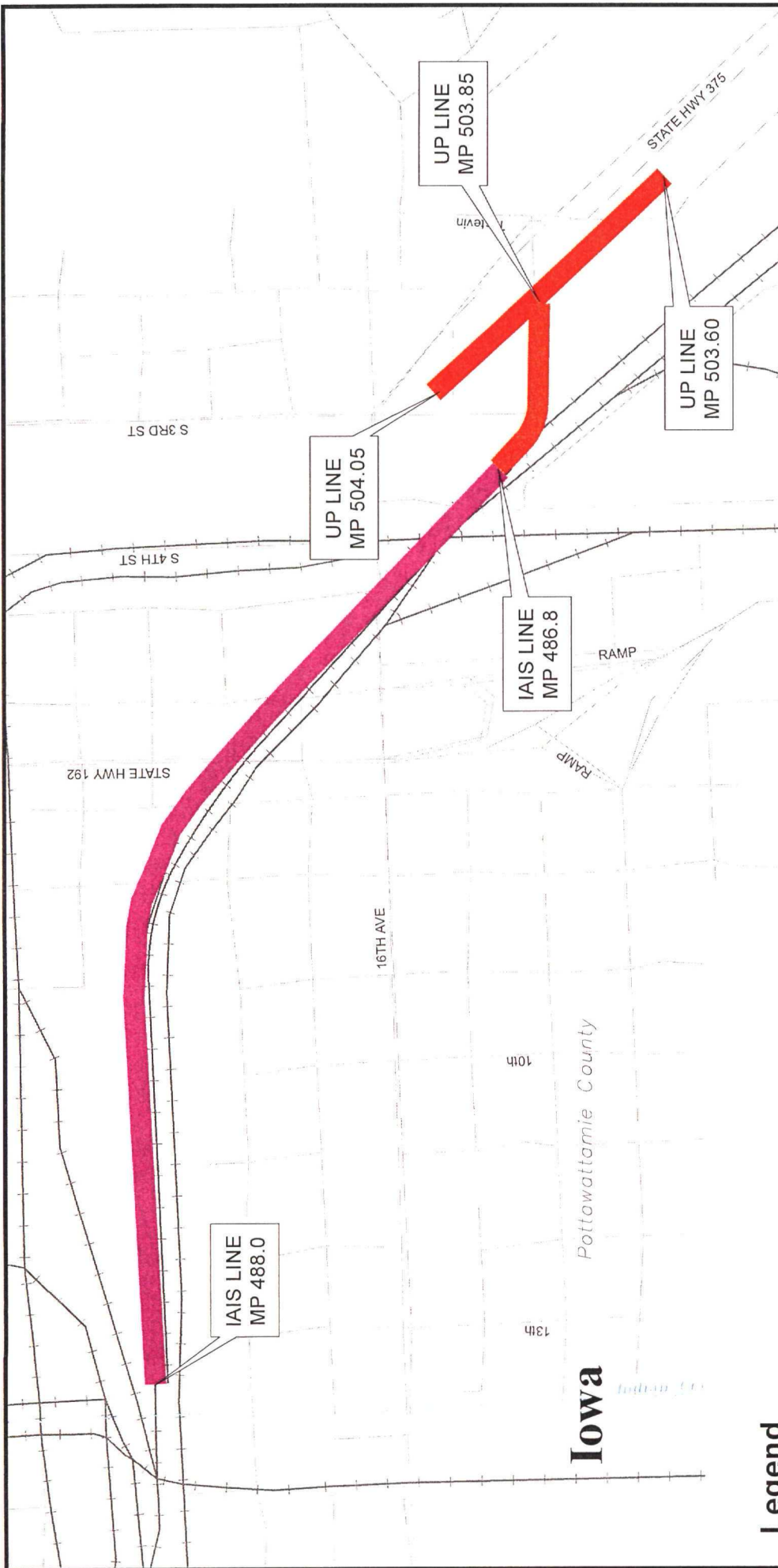
SUBSCRIBED AND SWORN TO
before me this 27 day of
September, 2011.



Notary Public

My Commission expires: March 2, 2013





Legend

— UP LINE (TO BE ABANDONED BY UP) AND
(IAIS TO DISCONTINUE TRACKAGE RIGHTS THEREON)

— IAIS LINE (UP TO DISCONTINUE
OVERHEAD TRACKAGE RIGHTS THEREON)

— CONNECTING TRACK (TO BE ABANDONED BY UP) AND
(IAIS TO DISCONTINUE TRACKAGE RIGHTS THEREON)

— OTHER RAILROADS

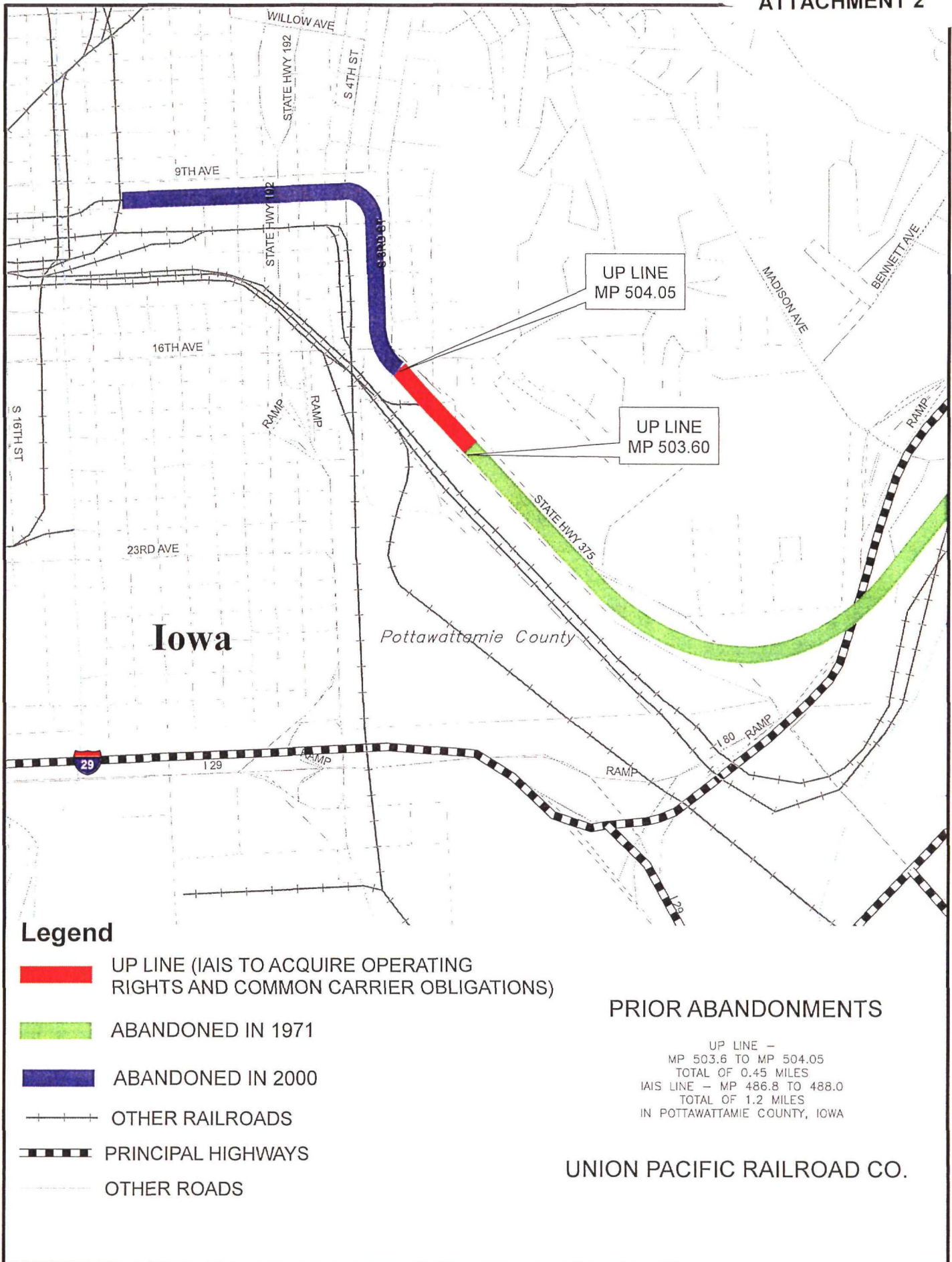
— PRINCIPAL HIGHWAYS

— OTHER ROADS

THE PROPOSED TRANSACTION

UP LINE - MP 503.6 TO MP 504.05
TOTAL OF 0.45 MILES
AND UP CONNECTING TRACK
MP 503.85 (UP) TO MP 486.8 (IAIS)
IAIS LINE - MP 486.8 TO 488.0
TOTAL OF 1.2 MILES PLUS CONNECTING TRACK
IN POTTAWATTAMIE COUNTY, IOWA

UNION PACIFIC RAILROAD CO.
GREAT WESTERN INDUSTRIAL LEAD
IOWA



Settlement Agreement-Amended

The undersigned parties to this agreement ("**Agreement**"), Union Pacific Railroad Company ("**Union Pacific**"), Midwest Walnut Company of Iowa ("**Midwest Walnut**"), and Red Giant Oil Company ("**Red Giant**"), following a mediation proceeding conducted on July 16, 2007, hereby agree to settle all disputes that are described within a lawsuit filed in the Iowa District Court in and for Pottawattamie County, Case No. 04781 EQCV90247 (the "**Lawsuit**"), all as hereafter specified.

1. Payment. Upon satisfaction of the two conditions precedent specified in Paragraph 13 of this Agreement (the date of such satisfaction being hereafter referred to as the "**Effective Date**"), Union Pacific and Red Giant shall pay to Midwest Walnut a total lump sum of \$100,000.00 in immediately available good funds (the "Settlement Payment"). Union Pacific shall contribute \$50,000.00 towards the Settlement Payment and Red Giant shall contribute \$50,000.00 towards the Settlement Payment .

2. Mutual Release of All Claims. At the time of signing this Agreement, all of the parties hereto shall execute a Mutual Release of All Claims ("**Mutual Release**"), with the intent and understanding that the Mutual Release shall be effective and binding on the parties upon the last to occur of the Effective Date or Midwest Walnut's receipt of the Settlement Payment specified.

3. Transfer of Real Estate to Red Giant.

A. Deeds From Midwest Walnut. Immediately after its receipt of the Settlement Payment, Midwest Walnut shall (i) deliver a properly executed Quit Claim Deed in the form attached hereto as Exhibit A, and if required to record the deed, a groundwater hazard statement and a declaration of value transferring to Red Giant all right, title and interest of Midwest Walnut in and to the same real estate that is described and defined within the Operating Agreement (as that term is hereinafter defined) as the "**Connecting Track Real Estate**" (except for that part of the same described in the Operating Agreement as "Parcel C", which parcel is included in the legal description of the land to be conveyed by the MWC Second Deed, as that term is hereafter defined) along with any and all easement rights and interests therein (the "**MWC First Deed**"), and (ii) deliver a properly executed Quit Claim Deed in the form attached hereto as Exhibit B, and if required to record the deed, a groundwater hazard

statement and a declaration of value transferring to Red Giant all right, title and interest of Midwest Walnut in and to a track of land upon which lies two parallel railroad tracks which are currently leased by Red Giant from Union Pacific and which are located on the northeast border of Red Giant's and Midwest Walnut's business premises and which two tracks merge into one track just northwest of Tostevin St., a/k/a South Avenue, Council Bluffs, Iowa, and continues as a single track across Tostevin Street, a/k/a South Avenue, for a relatively short distance at which point the track ends, along with any and all easement rights and interests therein, along with the land described as Parcel C in the Operating Agreement (the "**MWC Second Deed**"). Red Giant shall pay all costs associated with the surveys which were required to determine the legal descriptions of the lands described by MWC First Deed and MWC Second Deed.

B. Deeds from Union Pacific. Immediately after Midwest Walnut's receipt of the Settlement Payment, Union Pacific shall (i) deliver a properly executed Quit Claim Deed in the form attached hereto as Exhibit C, and if required to record the deed, a groundwater hazard statement and a declaration of value form (the "**UP First Deed**"), and (ii) deliver a properly executed Quit Claim Deed in the form attached hereto as Exhibit D, and if required to record the deed, a groundwater hazard statement and a declaration of value form (the "**UP Second Deed**").

C. Recording Costs. Red Giant shall pay all costs associated with the recording of the MWC First Deed, MWC Second Deed, UP First Deed and UP Second Deed, including, if applicable, all transfer tax.

4. Dismissal of Lawsuit with Prejudice. Upon its receipt of the Settlement Payment, Midwest Walnut shall dismiss, with prejudice, the Petition it filed in the Lawsuit, and Midwest Walnut shall pay and receipt out for its costs. At that time, Union Pacific shall dismiss, with prejudice, its Counter-Claim filed in the Lawsuit, and Union Pacific shall pay and receipt out for its costs. At that time, Red Giant shall dismiss, with prejudice, its Counter-Claim filed in the Lawsuit, and Red Giant shall pay and receipt out for its costs.

5. Midwest's Covenant Not To Sue. Effective as of the Effective Date, Midwest Walnut covenants to not sue Union Pacific and/or Red Giant nor any of their employees, officers, affiliates, agents, subsidiaries, or any other entity for any claim or cause of action that is described within or is contemplated by the allegations set forth in the Lawsuit, including, but not limited to, any claim or cause of action based on Union Pacific's actions or failure to act in

providing rail service to Midwest Walnut or Red Giant at any time prior to the Effective Date of this Agreement, reserving, however, its contractual, legal and equitable rights and entitlements arising out of this Agreement and the documents and agreements required by this Agreement.

6. Red Giant's Covenant Not to Sue. Effective as of the Effective Date, Red Giant covenants to not sue Union Pacific and/or Midwest Walnut nor any of their employees, officers, affiliates, agents, subsidiaries, or any other entity for any claim or cause of action that is described within or is contemplated by the allegations set forth in the Lawsuit, including, but not limited to, any claim or cause of action based on Union Pacific's actions or failure to act in providing rail service to Midwest Walnut or Red Giant at any time prior to the Effective Date of this Agreement, reserving, however, its contractual, legal and equitable rights and entitlements arising out of this Agreement and the documents and agreements required by this Agreement.

7. Union Pacific's Covenant Not to Sue. Effective as of the Effective Date, Union Pacific covenants to not sue Midwest Walnut and/or Red Giant, nor any of their employees, officers, affiliates, agents, subsidiaries, or any other entity for any claim or cause of action that is described within or is contemplated by the allegations set forth in the Lawsuit, including, but not limited to, any claim or cause of action based on Union Pacific's actions or failure to act in providing rail service to Midwest Walnut or Red Giant at any time prior to the Effective Date of this Agreement, reserving, however, its contractual, legal and equitable rights and entitlements arising out of this Agreement and the documents and agreements required by this Agreement.

8. Bill of Sale for Personal Property. At the same time as its delivery of the MWC First Deed and MWC Second Deed to Red Giant, Midwest Walnut agrees to provide Red Giant with a quit claim bill of sale in the form attached hereto as Exhibit E conveying, for the sum of One Dollar (\$1.00), as is-where is, all of its right, title and interest in and to the railroad ties, rails, ballast, railroad track, railroad switches, railroad equipment, railroad signals, and any and all other personal property located upon the real estate described in the MWC First Deed and the MWC Second Deed (all of which such real estate is herein collectively referred to as the "Real Estate").

9. Sale of Track and Railroad Equipment to Red Giant. Union Pacific agrees to sell to Red Giant, as is, for the sum of one dollar (\$1.00), all rail track, ballast, ties, switches, signals, and other railroad equipment now located on the real estate described within the UP First Deed

and the UP Second Deed. The conveyance shall be by way of written quit claim bill of sale in the form attached hereto as Exhibit F, which shall be delivered to Red Giant on or about the same date by which Midwest Walnut delivers to Red Giant the bill of sale required by Paragraph 8 hereof.

10. Prior and Existing Industry Track Agreements Between Union Pacific and Midwest Walnut. Union Pacific and Midwest Walnut agree, effective as of the Effective Date, to the termination of, and the release of one another from any and all claims, demands, causes of action, obligations, duties, responsibilities, payments, and any other responsibilities provided for by any and all industry track agreements that have been entered into by and between them or their predecessors before the Effective Date of this Agreement, including but not limited to the industry track agreement dated the 9th day of February, 1971, entered into between Midwest Walnut and Union Pacific's predecessor Chicago Northwestern Railway Company.

11. Prior and Existing Track Agreements Between Union Pacific and Red Giant. Union Pacific and Red Giant agree, effective as of the Effective Date, to the termination of and the release of one another from any and all claims, demands, causes of action, obligations, duties, responsibilities, payments and any other responsibilities provided for by any and all industry track agreements that have been entered into by and between them or their predecessors before the Effective Date of this Agreement.

12. Operating Agreement Between Red Giant and Midwest Walnut. Red Giant and Midwest Walnut have entered into an operating agreement between themselves upon terms and conditions acceptable to them ("**Operating Agreement**"). It is agreed and understood that the Operating Agreement shall not be effective or binding upon the parties to the same until the Effective Date of this Agreement.

13. Contingency Clause. This Agreement is contingent upon Union Pacific obtaining (a) Vice President or Assistant Vice President approval of the terms of this Agreement, and (b) approval by STB of the STB Application (as those terms are defined in Paragraph 15 of this Agreement). Union Pacific shall convey in writing, directed to the attention of Steve Woolley, attorney for Midwest Walnut, and William Hughes, attorney for Red Giant, the approval or disapproval of this Agreement by Union Pacific. Union Pacific shall attempt to obtain its required internal approval as soon as reasonably possible, but in any event, such approval or disapproval will be obtained within sixty (60) days of the date this Agreement is

signed by the last of all three parties to this Agreement.

14. Equitable Title. It is the intent and purpose of the parties to this Agreement that equitable title in and to the Real Estate shall vest solely in Red Giant on the Effective Date.

15. Surface Transportation Board. Union Pacific shall pursue all reasonably required steps needed to obtain the termination of all written terminal trackage rights agreements between Union Pacific and Iowa Interstate Railroad, Ltd. regarding the Connecting Track and the UP Track (as those two terms are defined in the Operating Agreement), including but not limited to the Terminal Trackage Rights agreement dated December 1, 1999. As part thereof, Union Pacific shall pursue the application to the Surface Transportation Board (hereinafter "STB") that has been or is to be signed by Iowa Interstate Railroad, Ltd. ("IAIS") and all three parties to this Agreement and which is primarily intended to obtain STB's approval to terminate UP's common carrier services to Red Giant and Midwest Walnut over the Connecting Track and the UP Track, and to transfer such common carrier obligation to IAIS (the "STB Application"). UP shall promptly comply with all STB requirements for approval of the STB Application, including the preparation and filing of any and all required amendments or replacements to the same, so long as such requirements do not materially change UP's duties and rights as specified by this Agreement. Red Giant and Midwest Walnut shall cooperate in all ways reasonably required of them by UP to assist UP in its satisfaction of its obligations under this Paragraph 15 so long as such requested cooperation does not materially change Red Giant's or Midwest Walnut's duties and rights as specified by this Agreement.

16. Specific Performance. The parties to this Agreement acknowledge that the subject matter of this Agreement is unique and that it would be difficult if not impossible to measure the damages which would result to one or more of the parties hereto from the breach by one or more parties hereto of the agreements and covenants set forth herein. Accordingly, in addition to any other remedies which the parties may have at law or in equity or as may otherwise be herein provided, the parties hereto agree that they each shall have the right to have any and all of the provisions of this Agreement specifically performed by all of the other parties hereto and that they have the right to obtain injunctive relief.

17. Miscellaneous. This Agreement reflects the entire agreement between the parties. regarding the matters specified within this Agreement. This Agreement shall be governed by the laws of the State of Iowa. This Agreement is intended by the parties to be an enforceable

written contract. Each of the undersigned hereby acknowledges they are authorized to bind their employers and respective clients to the terms of this Agreement.

18. Additional Terms:

A. The written Settlement Agreement, previously executed by the parties hereto dated April 22, 2008 is hereby rescinded, terminated, and held for naught.

B. Union Pacific shall use its best efforts to obtain STB approval of the STB Application in the most expeditious manner and Red Giant and Midwest Walnut shall cooperate in those efforts with Union Pacific in all ways reasonably requested of them by Union Pacific.

C. Pending STB approval of the STB Application, no rent for the use of the track located on the Real Estate will be paid to any party by Union Pacific, Red Giant or Midwest Walnut.

D. Union Pacific will not interfere with Red Giant's and Midwest Walnut's use of the track located on the Real Estate.

E. Unless it has already done so, Red Giant shall sign the STB Application as a co-applicant thereto.

F. Unless it has already done so, Midwest Walnut shall sign the STB Application as co-applicant thereto.

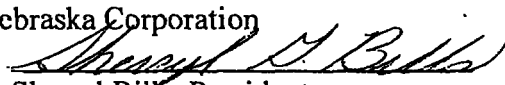
G. Commencing with the Effective Date, Union Pacific shall have no further responsibility for the maintenance of the track located on the Real Estate. The obligations of Red Giant and Midwest Walnut for the maintenance of the track located on the Real Estate (as the term "maintenance" is described in Section 6 of the Operating Agreement) shall be as specified by the Operating Agreement.

Dated this 16 day of October, 2009.

UNION PACIFIC RAILROAD COMPANY,
a Delaware Corporation

By: 
Raymond J. Hasiak, Law Department

RED GIANT OIL COMPANY,
a Nebraska Corporation

By: 
Sherryl Bills, President

RED GIANT OIL COMPANY,
a Nebraska Corporation

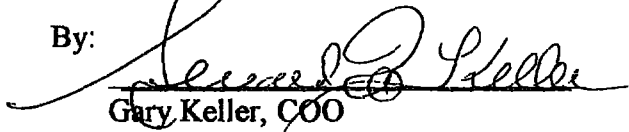
By: _____
Sherryl Bills, President

STW
m.h.
RLS

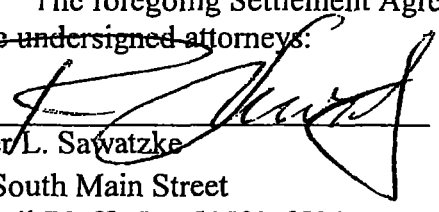
MIDWEST WALNUT COMPANY OF IOWA,
an Iowa Corporation

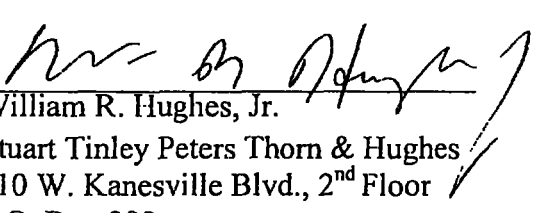
By: _____

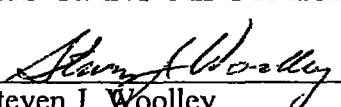
Gary Keller, COO



The foregoing Settlement Agreement has been approved as to form and content by each of the undersigned attorneys:


Roger L. Sawatzke
229 South Main Street
Council Bluffs, IA. 51503-6504
PH: (712) 325-4000
FX: (712) 325-5555
<mailto:sawatzkelaw@qwest.net>
ATTORNEY FOR DEFENDANT
UNION PACIFIC RAILROAD


William R. Hughes, Jr.
Stuart Tinley Peters Thorn & Hughes
310 W. Kanessville Blvd., 2nd Floor
P.O. Box 398
Co. Bluffs, IA. 51502-0398
hughes.william@stuarttinley.com
ATTORNEY FOR DEFENDANT
RED GIANT OIL COMPANY


Steven J. Woolley
McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O.
11404 West Dodge Rd., Suite 500
Omaha, NE 68154
stevewoolley@mgwl.com
ATTORNEY FOR PLAINTIFF
MIDWEST WALNUT COMPANY OF IOWA

Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South 3rd Street, Council Bluffs, Iowa 51503

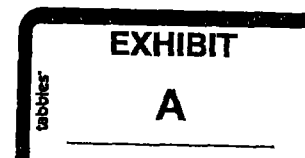


EXHIBIT "A"

PARCEL 1:

A parcel of land located in part of Lots 6 and 7; Block 5 of the Casady's Addition to the City of Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the southwest corner of said Lot 7; thence North 0°32'10" West, along the East right of way line of vacated High Street and along the west line of said Lot 7, a distance of 30.79 feet to the Point of Beginning; thence continuing North 0°32'10" West, along said east right of way line and along the west line of said Lot 7, a distance of 40.02 feet to a point on the southwesterly right of way line of the Chicago and North Western Railway Company, predecessor to Union Pacific Railroad Company; thence South 40°52'00" East, along said southwesterly right of way line, a distance of 178.88 feet; thence North 50°46'11" West a distance of 150.62 feet to the Point of Beginning.

Containing 0.053 acres more or less

PARCEL 2:

Also A parcel of land located in part of Lots 1, 12, 13, 14, 15 and 16, all in Block 6 of Casady's Addition, Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the northeast corner of said Lot 1 and Point of Beginning; thence South 0°32'10" East, along the west right of way line of vacated High Street and along the east line of said Lot 1, a distance of 65.81 feet to a point on a non-tangent curve concave southwesterly and having a radius of 457.46 feet and a central angle of 29°36'34", a radial line through said point bears North 29°02'21" East; thence northwesterly, along said curve, an arc length of 236.41 feet and having a chord bearing and distance of North 75°45'56" West, 233.78 feet to the end of said curve; thence South 89°25'47" West a distance of 164.94 feet to the Beginning of a tangent circular curve concave northeasterly and having a radius of 497.46 feet and a central angle of 9°11'13"; thence northwesterly, along said curve, an arc length of 79.76 feet and having a chord bearing and distance of North 85°58'37" West, 79.68 feet to a point on the east right of way line of vacated 3rd Street and also, being the west line of said Lot 12; thence north 0°36'02" West, along said east right of way line and along the west line of said Lot 12, a distance of 0.89 feet to the northwest corner of said Lot 12; thence North 89°34'34" East, along the south right of way line of 18th Avenue and along the north line of said Block 6, a distance of 470.43 feet to the Point of Beginning.

Containing 0.169 acres more or less

NOTE: Parcels 1 and 2 as described above are one and the same parcels of land as described on the Exhibit A attached to the Easement Deed dated December 10, 1999, by and between Midwest Walnut Company, grantor, and Union Pacific Railroad Company, grantee, recorded on September 20, 2000, in the office of the Recorder of Pottawattamie County, Iowa at Book 101, Page 13179 ("Easement Deed"), and as Parcels "A" and "B" as described on the Plat of Survey

attached to the Easement Deed which is dated October 21, 1999, and was prepared by Carl H. Rogers, Jr.

PARCEL 3:

A tract of land lying in a part of 18th Avenue right of way in Casady's Addition to the City of Council Bluffs, Iowa more particularly described as follows:

Commencing at the Southeast corner of Lot 4, Block 2 of said Casady's Addition and point of beginning of said permanent easement; thence South 81°24'54" East a distance of 147.33 feet; thence North 89°25'47" East a distance of 164.94 feet to the beginning of a tangent circular curve concave southwesterly and having a radius of 507.46 feet and a central angle of 24°00'04"; thence southeasterly, along said curve, an arc length of 212.57 feet and having a chord bearing and distance of South 78°34'11" East, 211.02 feet to a point on the South right of way line of said 18th Avenue and also, being the North line of Block 6 of said Casady's Addition; thence South 89°34'34" West, along said South right of way line and along the North line of said Block 6, a distance of 450.78 feet to the Northwest corner of Lot 12 of said Block 6; thence South 0°36'02" East, along the West line of said Lot 12, a distance of 0.89 feet to a point on a non-tangent curve concave northeasterly and having a radius of 497.46 feet and a central angle of 5°52'58", a radial line through said point bears South 8°37'00" West; thence northwesterly, along said curve, an arc length of 51.08 feet and having a chord bearing and distance of North 78°26'31" West, 51.05 feet to the end of said curve; thence North 45°34'19" West a distance of 79.74 feet to a point on the North right of way line of said 18th Avenue and also, being the South line of said Lot 4; thence North 89°29'39" East, along said North right of way line and along the South line of said Lot 4, a distance of 40.26 feet to the point of beginning of said permanent easement. Said permanent easement contains 21,401 square feet, more or less, or 0.491 of an acre, more or less.

NOTE: The South line of said Lot 4 is assumed to bear North 89°29'39" East for this description.

FURTHER NOTE: Parcel 3 as described above is one and the same parcel of land as described on the Exhibit "A" attached to the Easement for Railroad Right of Way dated March 23, 2000, by and between City of Council Bluffs, Iowa, grantor, and Union Pacific Railroad Company, grantee, recorded on April 4, 2000, in the office of the Recorder of Pottawattamie County, Iowa as Instrument No. 16452, Book 100, Page 45956.

Return To: William Hughes, Esq., Stuart Tinley Law Firm, LLP, Qwest Building, 310 W. Kanesville Blvd., 2nd Floor, P.O. Box 398, Council Bluffs, Iowa 51502-0398
Preparer: Steven J. Woolley, Esq., McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O., 11404 West Dodge Road, Suite 500, Omaha, Nebraska 68154-2584
Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South 3rd Street, Council Bluffs, Iowa 51503

QUIT CLAIM DEED

For the consideration of One Dollar and other valuable consideration, Midwest Walnut Company of Iowa, an Iowa corporation, does hereby Quit Claim to Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, all of its right, title, interest, estate, claim and demand in the following real estate in Pottawattamie County, Iowa:

See Exhibit "A" attached hereto and incorporated herein by this reference.

Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated: _____, 2009

MIDWEST WALNUT COMPANY OF IOWA,
an Iowa corporation, Grantor

By: Gerald W. Keller, Chief Operating Officer

NOTE: Consideration less than \$500.00

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

This instrument was acknowledged before me on _____, 2009, by Gerald W. Keller as Chief Operating Officer of Midwest Walnut Company of Iowa, an Iowa corporation.

Notary Public

335507 3.DOC

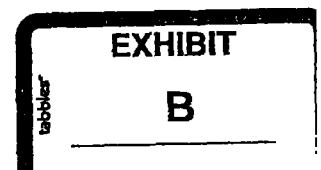


Exhibit A

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN PART OF BLOCKS 1, 3, 5 AND 10, AND A PART OF ALLEYS AND PART OF VACATED ALLEYS IN SAID BLOCKS IN CASADY'S ADDITION, AND PARTS OF 18TH AVENUE, SOUTH AVENUE AND RELOCATED 3RD STREET CONNECTION AND ALSO, PARTS OF VACATED 17TH AVENUE, VACATED 19TH AVENUE AND VACATED HIGH STREET, AND PART OF LOT 53 AND PART OF LOT 58 IN LINDA LOMA ADDITION, COUNCIL BLUFFS, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 6 IN SAID CASADY'S ADDITION AND POINT OF BEGINNING; THENCE NORTH $38^{\circ}11'17''$ WEST A DISTANCE OF 83.49 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 3, SAID POINT BEING 10.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY OF TWO PARALLEL RAILROAD TRACKS (THE MOST NORTHEASTERLY OF WHICH IS THE MAIN RAILROAD TRACK); THENCE NORTH $40^{\circ}47'00''$ WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 507.48 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF $13^{\circ}13'08''$ AND A RADIUS OF 710.00 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK AND ALONG SAID CURVE, AN ARC LENGTH OF 163.81 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH $34^{\circ}10'26''$ WEST, 163.44 FEET TO THE END OF SAID CURVE; THENCE NORTH $27^{\circ}33'50''$ WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 3.70 FEET TO A POINT ON THE WEST LINE OF LOT 11 OF SAID BLOCK 1; THENCE NORTH $0^{\circ}36'02''$ WEST, ALONG THE WEST LINE OF LOTS 11 AND 12 OF SAID BLOCK 1, A DISTANCE OF 84.41 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF $18^{\circ}24'10''$ AND A RADIUS OF 595.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC LENGTH OF 191.11 FEET AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH $33^{\circ}32'05''$ EAST, 190.29 FEET TO THE END OF SAID CURVE; THENCE SOUTH $42^{\circ}44'10''$ EAST A DISTANCE OF 136.46 FEET TO A POINT ON THE SOUTH LINE OF LOT 7 OF SAID BLOCK 1; THENCE SOUTH $40^{\circ}35'09''$ EAST A DISTANCE OF 86.36 FEET TO A POINT ON THE NORTH LINE OF LOT 15 OF SAID BLOCK 3; THENCE SOUTH $40^{\circ}40'21''$ EAST A DISTANCE OF 140.58 FEET TO A POINT ON THE WEST LINE OF A NORTH-SOUTH ALLEY; THENCE SOUTH $40^{\circ}38'59''$ EAST A DISTANCE OF 53.31 FEET TO A POINT ON THE NORTH LINE OF LOT 3 OF SAID BLOCK 3; THENCE SOUTH $40^{\circ}41'43''$ EAST A DISTANCE OF 89.12 FEET TO A POINT ON THE NORTH LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH $40^{\circ}37'27''$ EAST A DISTANCE OF 58.00 FEET TO A POINT ON THE EAST LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH $40^{\circ}30'49''$ EAST A DISTANCE OF 117.25 FEET TO A POINT ON THE NORTH LINE OF LOT 8 OF SAID BLOCK 5; THENCE SOUTH $40^{\circ}38'57''$ EAST A DISTANCE OF 180.35 FEET TO A POINT ON THE EAST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH $40^{\circ}38'28''$ EAST A DISTANCE OF 31.82 FEET TO A

POINT ON THE SOUTH LINE OF AN EAST-WEST ALLEY; THENCE SOUTH $40^{\circ}36'28''$ EAST A DISTANCE OF 159.69 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH $40^{\circ}36'28''$ EAST A DISTANCE OF 123.81 FEET TO A POINT ON THE WEST LINE OF LOT 53 OF SAID LINDA LOMA ADDITION; THENCE SOUTH $40^{\circ}36'28''$ EAST A DISTANCE OF 252.08 FEET; THENCE SOUTH $39^{\circ}18'08''$ WEST A DISTANCE OF 25.09 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF $9^{\circ}57'46''$ AND A RADIUS OF 659.00 FEET, SAID POINT BEING 9.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MAIN RAILROAD TRACK; THENCE NORTHWESTERLY AND PARALLEL WITH SAID MAIN RAILROAD TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 114.59 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH $45^{\circ}42'59''$ WEST, 114.44 FEET TO THE END OF SAID CURVE; THENCE NORTH $40^{\circ}44'06''$ WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 100.75 FEET TO A POINT ON THE WEST LINE OF LOT 58 OF SAID LINDA LOMA ADDITION; THENCE NORTH $40^{\circ}44'06''$ WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 102.25 FEET TO A POINT ON THE EAST LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH $40^{\circ}44'06''$ WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 2.30 FEET TO A POINT 9.00 FEET SOUTHWESTERLY MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH $42^{\circ}49'38''$ WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 4.62 FEET TO A POINT ON THE NORTH LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH $42^{\circ}49'38''$ WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 14.20 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE SOUTHWESTERLY AND HAVING A CENTRAL ANGLE OF $4^{\circ}45'26''$ AND A RADIUS OF 481.48 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 39.98 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH $45^{\circ}12'17''$ WEST, 39.97 FEET TO THE END OF SAID CURVE; THENCE NORTH $47^{\circ}35'00''$ WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 39.92 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH $89^{\circ}34'34''$ WEST, ALONG THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5, A DISTANCE OF 9.57 FEET; THENCE NORTH $40^{\circ}52'00''$ WEST A DISTANCE OF 100.74 FEET TO A POINT 9.50 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH $40^{\circ}52'00''$ WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 178.88 FEET TO A POINT ON THE WEST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH $0^{\circ}32'10''$ EAST, ALONG THE WEST LINE OF LOT 7 OF SAID BLOCK 5, A DISTANCE OF 40.02 FEET; THENCE NORTH $55^{\circ}56'12''$ WEST A DISTANCE OF 80.18 FEET TO A POINT OF THE EAST LINE OF LOT 1 OF SAID BLOCK 6; THENCE NORTH $0^{\circ}32'10''$ WEST, ALONG THE EAST LINE OF LOT 1 OF SAID BLOCK 6, A DISTANCE OF 65.81 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 1.815 ACRES, MORE OR LESS. SAID

PARCEL IS SUBJECT TO AN EASEMENT FOR STREET RIGHT OF WAY FOR RELOCATED 3RD STREET CONNECTION TO HARRY LANGDON BOULEVARD. SAID EASEMENT IS RECORDED IN BOOK 101, PAGE 24609 IN THE OFFICE OF THE POTTAWATTAMIE COUNTY RECORDER. SAID PARCEL IS ALSO SUBJECT TO ANY AND ALL OTHER EXISTING EASEMENTS, RESERVATIONS AND/OR RIGHTS-OF-WAY WHATSOEVER

NOTE: THE EAST LINE OF LOT 1 OF SAID BLOCK 6 IS ASSUMED TO BEAR NORTH 0°32'10" WEST FOR THIS DESCRIPTION.

Return To: William Hughes, Esq, Stuart Tinley Law Firm, LLP, Qwest Building, 310 W. Kanesville Blvd.,
2" Floor, P.O. Box 398, Council Bluffs, Iowa 51502-0398
Preparer: Roger L. Sawatzke, Attorney 229 South Main Street Council Bluffs Iowa 51503
Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South
3rd Street, Council Bluffs, Iowa 51503

QUIT CLAIM DEED

For the consideration of One Dollar and other valuable consideration, Union Pacific Railroad Company, a Delaware corporation, does hereby Quit Claim to Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, all of its right, title, interest, estate, claim and demand in the following easements and real estate in Pottawattamie County, Iowa (collectively, the "Property"):

1. Easement Deed dated December 10, 1999, by and between Midwest Walnut Company, grantor, and Union Pacific Railroad Company, grantee, recorded on September 20, 2000, in the office of the Recorder of Pottawattamie County, Iowa at Book 101, Page 13179;
2. Easement for Railroad Right of Way dated March 23, 2000, by and between City of Council Bluffs, Iowa, grantor and Union Pacific Railroad Company, grantee, recorded on April 4, 2000, in the office of the Recorder of Pottawattamie County, Iowa as Instrument No. 16452, Book 100, Page 45956; and
3. See Exhibit "A" attached hereto and incorporated herein by this reference.

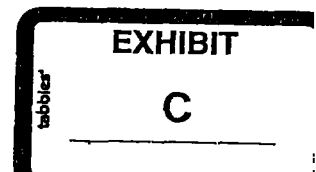
Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated: _____, 2009

Union Pacific Railroad Company, a Delaware
Corporation, Grantor

By: _____
Tony K. Love, Assistant Vice President
Real Estate Department

NOTE: Consideration less than \$500.00



STATE OF NEBRASKA)
) ss.

COUNTY OF DOUGLAS)

This instrument was acknowledged before me on _____, 2009, by Tony K. Love, Assistant Vice President, Real Estate Department of Union Pacific Railroad Company, a Delaware corporation, Grantor.

Notary Public in and for the State of Nebraska

EXHIBIT "A"

PARCEL 1:

A parcel of land located in part of Lots 6 and 7; Block 5 of the Casady's Addition to the City of Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the southwest corner of said Lot 7; thence North 0°32'10" West, along the East right of way line of vacated High Street and along the west line of said Lot 7, a distance of 30.79 feet to the Point of Beginning; thence continuing North 0°32'10" West, along said east right of way line and along the west line of said Lot 7, a distance of 40.02 feet to a point on the southwesterly right of way line of the Chicago and North Western Railway Company, predecessor to Union Pacific Railroad Company; thence South 40°52'00" East, along said southwesterly right of way line, a distance of 178.88 feet; thence North 50°46'11" West a distance of 150.62 feet to the Point of Beginning.

Containing 0.053 acres more or less

PARCEL 2:

Also A parcel of land located in part of Lots 1, 12, 13, 14, 15 and 16, all in Block 6 of Casady's Addition, Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the northeast corner of said Lot 1 and Point of Beginning; thence South 0°32'10" East, along the west right of way line of vacated High Street and along the east line of said Lot 1, a distance of 65.81 feet to a point on a non-tangent curve concave southwesterly and having a radius of 457.46 feet and a central angle of 29°36'34", a radial line through said point bears North 29°02'21" East; thence northwesterly, along said curve, an arc length of 236.41 feet and having a chord bearing and distance of North 75°45'56" West, 233.78 feet to the end of said curve; thence South 89°25'47" West a distance of 164.94 feet to the Beginning of a tangent circular curve concave northeasterly and having a radius of 497.46 feet and a central angle of 9°11'13"; thence northwesterly, along said curve, an arc length of 79.76 feet and having a chord bearing and distance of North 85°58'37" West, 79.68 feet to a point on the east right of way line of vacated 3rd Street and also, being the west line of said Lot 12; thence north 0°36'02" West, along said east right of way line and along the west line of said Lot 12, a distance of 0.89 feet to the northwest corner of said Lot 12; thence North 89°34'34" East, along the south right of way line of 18th Avenue and along the north line of said Block 6, a distance of 470.43 feet to the Point of Beginning.

Containing 0.169 acres more or less

NOTE: Parcels 1 and 2 as described above are one and the same parcels of land as described on the Exhibit A attached to the Easement Deed dated December 10, 1999, by and between Midwest Walnut Company, grantor, and Union Pacific Railroad Company, grantee, recorded on September 20, 2000, in the office of the Recorder of Pottawattamie County, Iowa at Book 101, Page 13179 ("Easement Deed"), and as Parcels "A" and "B" as described on the Plat of Survey attached to the Easement Deed which is dated October 21, 1999, and was prepared by Carl H. Rogers, Jr.

PARCEL 3:

A tract of land lying in a part of 18th Avenue right of way in Casady's Addition to the City of Council Bluffs, Iowa more particularly described as follows:

Commencing at the Southeast corner of Lot 4, Block 2 of said Casady's Addition and point of beginning of said permanent easement; thence South 81°24'54" East a distance of 147.33 feet; thence North 89°25'47" East a distance of 164.94 feet to the beginning of a tangent circular curve concave southwesterly and having a radius of 507.46 feet and a central angle of 24°00'04"; thence southeasterly, along said curve, an arc length of 212.57 feet and having a chord bearing and distance of South 78°34'11" East, 211.02 feet to a point on the South right of way line of said 18th Avenue and also, being the North line of Block 6 of said Casady's Addition; thence South 89°34'34" West, along said South right of way line and along the North line of said Block 6, a distance of 450.78 feet to the Northwest corner of Lot 12 of said Block 6; thence South 0°36'02" East, along the West line of said Lot 12, a distance of 0.89 feet to a point on a non-tangent curve concave northeasterly and having a radius of 497.46 feet and a central angle of 5°52'58", a radial line through said point bears South 8°37'00" West; thence northwesterly, along said curve, an arc length of 51.08 feet and having a chord bearing and distance of North 78°26'31" West, 51.05 feet to the end of said curve; thence North 45°34'19" West a distance of 79.74 feet to a point on the North right of way line of said 18th Avenue and also, being the South line of said Lot 4; thence North 89°29'39" East, along said North right of way line and along the South line of said Lot 4, a distance of 40.26 feet to the point of beginning of said permanent easement. Said permanent easement contains 21,401 square feet, more or less, or 0.491 of an acre, more or less.

NOTE: The South line of said Lot 4 is assumed to bear North 89°29'39" East for this description.

FURTHER NOTE: Parcel 3 as described above is one and the same parcel of land as described on the Exhibit "A" attached to the Easement for Railroad Right of Way dated March 23, 2000, by and between City of Council Bluffs, Iowa, grantor, and Union Pacific Railroad Company, grantee, recorded on April 4, 2000, in the office of the Recorder of Pottawattamie County, Iowa as Instrument No. 16452, Book 100, Page 45956.

Return To: William Hughes, Esq, Stuart Tinley Law Firm, LLP, Qwest Building, 310 W. Kanesville Blvd.,
2" Floor, P.O. Box 398, Council Bluffs, Iowa 51502-0398
Preparer: Roger L. Sawatzke. Attorney 229 South Main Street Council Bluffs Iowa 51503
Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South
3rd Street, Council Bluffs, Iowa 51503

QUIT CLAIM DEED

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See Exhibit "A" attached hereto and incorporated herein by this reference.

Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated: _____, 2009

Union Pacific Railroad Company, a Delaware
Corporation, Grantor

By: _____
Tony K. Love, Assistant Vice President
Real Estate Department

NOTE: Consideration less than \$500.00

STATE OF NEBRASKA)
) ss.

COUNTY OF DOUGLAS)

This instrument was acknowledged before me on _____, 2009, by Tony K. Love, Assistant Vice President, Real Estate Department of Union Pacific Railroad Company, a Delaware corporation, Grantor.

Notary Public in and for the State of Nebraska

Exhibit A

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN PART OF BLOCKS 1, 3, 5 AND 10, AND A PART OF ALLEYS AND PART OF VACATED ALLEYS IN SAID BLOCKS IN CASADY'S ADDITION, AND PARTS OF 18TH AVENUE, SOUTH AVENUE AND RELOCATED 3RD STREET CONNECTION AND ALSO, PARTS OF VACATED 17TH AVENUE, VACATED 19TH AVENUE AND VACATED HIGH STREET, AND PART OF LOT 53 AND PART OF LOT 58 IN LINDA LOMA ADDITION, COUNCIL BLUFFS, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 6 IN SAID CASADY'S ADDITION AND POINT OF BEGINNING; THENCE NORTH $38^{\circ}11'17''$ WEST A DISTANCE OF 83.49 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 3, SAID POINT BEING 10.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY OF TWO PARALLEL RAILROAD TRACKS (THE MOST NORTHEASTERLY OF WHICH IS THE MAIN RAILROAD TRACK); THENCE NORTH $40^{\circ}47'00''$ WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 507.48 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF $13^{\circ}13'08''$ AND A RADIUS OF 710.00 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK AND ALONG SAID CURVE, AN ARC LENGTH OF 163.81 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH $34^{\circ}10'26''$ WEST, 163.44 FEET TO THE END OF SAID CURVE; THENCE NORTH $27^{\circ}33'50''$ WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 3.70 FEET TO A POINT ON THE WEST LINE OF LOT 11 OF SAID BLOCK 1; THENCE NORTH $0^{\circ}36'02''$ WEST, ALONG THE WEST LINE OF LOTS 11 AND 12 OF SAID BLOCK 1, A DISTANCE OF 84.41 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF $18^{\circ}24'10''$ AND A RADIUS OF 595.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC LENGTH OF 191.11 FEET AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH $33^{\circ}32'05''$ EAST, 190.29 FEET TO THE END OF SAID CURVE; THENCE SOUTH $42^{\circ}44'10''$ EAST A DISTANCE OF 136.46 FEET TO A POINT ON THE SOUTH LINE OF LOT 7 OF SAID BLOCK 1; THENCE SOUTH $40^{\circ}35'09''$ EAST A DISTANCE OF 86.36 FEET TO A POINT ON THE NORTH LINE OF LOT 15 OF SAID BLOCK 3; THENCE SOUTH $40^{\circ}40'21''$ EAST A DISTANCE OF 140.58 FEET TO A POINT ON THE WEST LINE OF A NORTH-SOUTH ALLEY; THENCE SOUTH $40^{\circ}38'59''$ EAST A DISTANCE OF 53.31 FEET TO A POINT ON THE NORTH LINE OF LOT 3 OF SAID BLOCK 3; THENCE SOUTH $40^{\circ}41'43''$ EAST A DISTANCE OF 89.12 FEET TO A POINT ON THE NORTH LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH $40^{\circ}37'27''$ EAST A DISTANCE OF 58.00 FEET TO A POINT ON THE EAST LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH $40^{\circ}30'49''$ EAST A DISTANCE OF 117.25 FEET TO A POINT ON THE NORTH LINE OF LOT 8 OF SAID BLOCK 5; THENCE SOUTH $40^{\circ}38'57''$ EAST A DISTANCE OF 180.35 FEET TO A POINT ON THE EAST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH $40^{\circ}38'28''$ EAST A DISTANCE OF 31.82 FEET TO A POINT ON THE SOUTH LINE OF AN EAST-WEST ALLEY; THENCE SOUTH $40^{\circ}36'28''$ EAST A DISTANCE OF 159.69 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF

SAID BLOCK 5; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 123.81 FEET TO A POINT ON THE WEST LINE OF LOT 53 OF SAID LINDA LOMA ADDITION; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 252.08 FEET; THENCE SOUTH 39°18'08" WEST A DISTANCE OF 25.09 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 9°57'46" AND A RADIUS OF 659.00 FEET, SAID POINT BEING 9.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MAIN RAILROAD TRACK; THENCE NORTHWESTERLY AND PARALLEL WITH SAID MAIN RAILROAD TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 114.59 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 45°42'59" WEST, 114.44 FEET TO THE END OF SAID CURVE; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 100.75 FEET TO A POINT ON THE WEST LINE OF LOT 58 OF SAID LINDA LOMA ADDITION; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 102.25 FEET TO A POINT ON THE EAST LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 2.30 FEET TO A POINT 9.00 FEET SOUTHWESTERLY MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH 42°49'38" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 4.62 FEET TO A POINT ON THE NORTH LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH 42°49'38" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 14.20 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE SOUTHWESTERLY AND HAVING A CENTRAL ANGLE OF 4°45'26" AND A RADIUS OF 481.48 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 39.98 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 45°12'17" WEST, 39.97 FEET TO THE END OF SAID CURVE; THENCE NORTH 47°35'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 39.92 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH 89°34'34" WEST, ALONG THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5, A DISTANCE OF 9.57 FEET; THENCE NORTH 40°52'00" WEST A DISTANCE OF 100.74 FEET TO A POINT 9.50 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH 40°52'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 178.88 FEET TO A POINT ON THE WEST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH 0°32'10" EAST, ALONG THE WEST LINE OF LOT 7 OF SAID BLOCK 5, A DISTANCE OF 40.02 FEET; THENCE NORTH 55°56'12" WEST A DISTANCE OF 80.18 FEET TO A POINT OF THE EAST LINE OF LOT 1 OF SAID BLOCK 6; THENCE NORTH 0°32'10" WEST, ALONG THE EAST LINE OF LOT 1 OF SAID BLOCK 6, A DISTANCE OF 65.81 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 1.815 ACRES, MORE OR LESS. SAID PARCEL IS SUBJECT TO AN EASEMENT FOR STREET RIGHT OF WAY FOR RELOCATED 3RD STREET CONNECTION TO HARRY LANGDON BOULEVARD. SAID EASEMENT IS RECORDED IN BOOK 101, PAGE 24609 IN THE OFFICE OF THE POTTAWATTAMIE COUNTY RECORDER. SAID PARCEL IS

ALSO SUBJECT TO ANY AND ALL OTHER EXISTING EASEMENTS, RESERVATIONS
AND/OR RIGHTS-OF-WAY WHATSOEVER

NOTE: THE EAST LINE OF LOT 1 OF SAID BLOCK 6 IS ASSUMED TO BEAR NORTH
0°32'10" WEST FOR THIS DESCRIPTION.

Return To: William Hughes, Esq, Stuart Tinley Law Firm, LLP, Qwest Building, 310 W. Kanesville Blvd., 2nd Floor, P.O. Box 398, Council Bluffs, Iowa 51502-0398
Preparer: Steven J. Woolley, Esq., McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O., 11404 West Dodge Road, Suite 500, Omaha, Nebraska 68154-2584
Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South 3rd Street, Council Bluffs, Iowa 51503

BILL OF SALE

For the consideration of One Dollar and other valuable consideration, Midwest Walnut Company of Iowa, an Iowa corporation ("Seller"), does hereby sell, transfer and assign to Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa ("Buyer"), all of its right, title and interest in the following described personal property located in Pottawattamie County, State of Iowa:

All railroad ties, rails, ballast, railroad track, railroad switches, railroad equipment, railroad signals and any and all other personal property located upon the following described real estate:

Sec Exhibit "A" attached hereto and incorporated herein by this reference.

SELLER HEREBY SELLS, TRANSFERS AND ASSIGNS SAID PERSONAL PROPERTY IN "AS IS" CONDITION. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE IN REGARD TO SAID PERSONAL PROPERTY ARE HEREBY EXCLUDED. THERE ARE NO WARRANTIES OF FITNESS WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.

CERTIFICATION. Buyers and Sellers each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such persons, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to the other party's breach of the foregoing certification.

Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as the appropriate gender, according to the context.

Dated: _____, 2009

MIDWEST WALNUT COMPANY OF IOWA,
an Iowa corporation, Seller

By: Gerald W. Keller, Chief Operating Officer

Dated: _____, 2009

RED GIANT OIL COMPANY,
a Nebraska corporation authorized to do
business in Iowa, Buyer

By: _____
Sherryl Bills, President

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

This instrument was acknowledged before me on _____, 2009, by Gerald W. Keller as Chief Operating Officer of Midwest Walnut Company of Iowa, an Iowa corporation.

Notary Public

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

This instrument was acknowledged before me on _____, 2009, by Sherryl Bills, President of Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa.

Notary Public

EXHIBIT "A"

PARCEL 1:

A parcel of land located in part of Lots 6 and 7; Block 5 of the Casady's Addition to the City of Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the southwest corner of said Lot 7; thence North 0°32'10" West, along the East right of way line of vacated High Street and along the west line of said Lot 7, a distance of 30.79 feet to the Point of Beginning; thence continuing North 0°32'10" West, along said east right of way line and along the west line of said Lot 7, a distance of 40.02 feet to a point on the southwesterly right of way line of the Chicago and North Western Railway Company, predecessor to Union Pacific Railroad Company; thence South 40°52'00" East, along said southwesterly right of way line, a distance of 178.88 feet; thence North 50°46'11" West a distance of 150.62 feet to the Point of Beginning.

Containing 0.053 acres more or less

PARCEL 2:

Also A parcel of land located in part of Lots 1, 12, 13, 14, 15 and 16, all in Block 6 of Casady's Addition, Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the northeast corner of said Lot 1 and Point of Beginning; thence South 0°32'10" East, along the west right of way line of vacated High Street and along the east line of said Lot 1, a distance of 65.81 feet to a point on a non-tangent curve concave southwesterly and having a radius of 457.46 feet and a central angle of 29°36'34", a radial line through said point bears North 29°02'21" East; thence northwesterly, along said curve, an arc length of 236.41 feet and having a chord bearing and distance of North 75°45'56" West, 233.78 feet to the end of said curve; thence South 89°25'47" West a distance of 164.94 feet to the Beginning of a tangent circular curve concave northeasterly and having a radius of 497.46 feet and a central angle of 9°11'13"; thence northwesterly, along said curve, an arc length of 79.76 feet and having a chord bearing and distance of North 85°58'37" West, 79.68 feet to a point on the east right of way line of vacated 3rd Street and also, being the west line of said Lot 12; thence north 0°36'02" West, along said east right of way line and along the west line of said Lot 12, a distance of 0.89 feet to the northwest corner of said Lot 12; thence North 89°34'34" East, along the south right of way line of 18th Avenue and along the north line of said Block 6, a distance of 470.43 feet to the Point of Beginning.

Containing 0.169 acres more or less

NOTE: Parcels 1 and 2 as described above are one and the same parcels of land as described on the Exhibit A attached to the Easement Deed dated December 10, 1999, by and between Midwest Walnut Company, grantor, and Union Pacific Railroad Company, grantee, recorded on September 20, 2000, in the office of the Recorder of Pottawattamie County, Iowa at Book 101, Page 13179 ("Easement Deed"), and as Parcels "A" and "B" as described on the Plat of Survey

attached to the Easement Deed which is dated October 21, 1999, and was prepared by Carl H. Rogers, Jr.

PARCEL 3:

A tract of land lying in a part of 18th Avenue right of way in Casady's Addition to the City of Council Bluffs, Iowa more particularly described as follows:

Commencing at the Southeast corner of Lot 4, Block 2 of said Casady's Addition and point of beginning of said permanent easement; thence South 81°24'54" East a distance of 147.33 feet; thence North 89°25'47" East a distance of 164.94 feet to the beginning of a tangent circular curve concave southwesterly and having a radius of 507.46 feet and a central angle of 24°00'04"; thence southeasterly, along said curve, an arc length of 212.57 feet and having a chord bearing and distance of South 78°34'11" East, 211.02 feet to a point on the South right of way line of said 18th Avenue and also, being the North line of Block 6 of said Casady's Addition; thence South 89°34'34" West, along said South right of way line and along the North line of said Block 6, a distance of 450.78 feet to the Northwest corner of Lot 12 of said Block 6; thence South 0°36'02" East, along the West line of said Lot 12, a distance of 0.89 feet to a point on a non-tangent curve concave northeasterly and having a radius of 497.46 feet and a central angle of 5°52'58", a radial line through said point bears South 8°37'00" West; thence northwesterly, along said curve, an arc length of 51.08 feet and having a chord bearing and distance of North 78°26'31" West, 51.05 feet to the end of said curve; thence North 45°34'19" West a distance of 79.74 feet to a point on the North right of way line of said 18th Avenue and also, being the South line of said Lot 4; thence North 89°29'39" East, along said North right of way line and along the South line of said Lot 4, a distance of 40.26 feet to the point of beginning of said permanent easement. Said permanent easement contains 21,401 square feet, more or less, or 0.491 of an acre, more or less.

NOTE: The South line of said Lot 4 is assumed to bear North 89°29'39" East for this description.

FURTHER NOTE: Parcel 3 as described above is one and the same parcel of land as described on the Exhibit "A" attached to the Easement for Railroad Right of Way dated March 23, 2000, by and between City of Council Bluffs, Iowa, grantor, and Union Pacific Railroad Company, grantee, recorded on April 4, 2000, in the office of the Recorder of Pottawattamie County, Iowa as Instrument No. 16452, Book 100, Page 45956.

PARCEL 4:

A PARCEL OF LAND LOCATED IN PART OF BLOCKS 1, 3, 5 AND 10, AND A PART OF ALLEYS AND PART OF VACATED ALLEYS IN SAID BLOCKS IN CASADY'S ADDITION, AND PARTS OF 18TH AVENUE, SOUTH AVENUE AND RELOCATED 3RD STREET CONNECTION AND ALSO, PARTS OF VACATED 17TH AVENUE, VACATED 19TH AVENUE AND VACATED HIGH STREET, AND PART OF LOT 53 AND PART OF LOT 58 IN LINDA LOMA ADDITION, COUNCIL BLUFFS, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 6 IN SAID

CASADY'S ADDITION AND POINT OF BEGINNING; THENCE NORTH $38^{\circ}11'17''$ WEST A DISTANCE OF 83.49 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 3, SAID POINT BEING 10.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY OF TWO PARALLEL RAILROAD TRACKS (THE MOST NORTHEASTERLY OF WHICH IS THE MAIN RAILROAD TRACK); THENCE NORTH $40^{\circ}47'00''$ WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 507.48 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF $13^{\circ}13'08''$ AND A RADIUS OF 710.00 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK AND ALONG SAID CURVE, AN ARC LENGTH OF 163.81 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH $34^{\circ}10'26''$ WEST, 163.44 FEET TO THE END OF SAID CURVE; THENCE NORTH $27^{\circ}33'50''$ WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 3.70 FEET TO A POINT ON THE WEST LINE OF LOT 11 OF SAID BLOCK 1; THENCE NORTH $0^{\circ}36'02''$ WEST, ALONG THE WEST LINE OF LOTS 11 AND 12 OF SAID BLOCK 1, A DISTANCE OF 84.41 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF $18^{\circ}24'10''$ AND A RADIUS OF 595.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC LENGTH OF 191.11 FEET AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH $33^{\circ}32'05''$ EAST, 190.29 FEET TO THE END OF SAID CURVE; THENCE SOUTH $42^{\circ}44'10''$ EAST A DISTANCE OF 136.46 FEET TO A POINT ON THE SOUTH LINE OF LOT 7 OF SAID BLOCK 1; THENCE SOUTH $40^{\circ}35'09''$ EAST A DISTANCE OF 86.36 FEET TO A POINT ON THE NORTH LINE OF LOT 15 OF SAID BLOCK 3; THENCE SOUTH $40^{\circ}40'21''$ EAST A DISTANCE OF 140.58 FEET TO A POINT ON THE WEST LINE OF A NORTH-SOUTH ALLEY; THENCE SOUTH $40^{\circ}38'59''$ EAST A DISTANCE OF 53.31 FEET TO A POINT ON THE NORTH LINE OF LOT 3 OF SAID BLOCK 3; THENCE SOUTH $40^{\circ}41'43''$ EAST A DISTANCE OF 89.12 FEET TO A POINT ON THE NORTH LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH $40^{\circ}37'27''$ EAST A DISTANCE OF 58.00 FEET TO A POINT ON THE EAST LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH $40^{\circ}30'49''$ EAST A DISTANCE OF 117.25 FEET TO A POINT ON THE NORTH LINE OF LOT 8 OF SAID BLOCK 5; THENCE SOUTH $40^{\circ}38'57''$ EAST A DISTANCE OF 180.35 FEET TO A POINT ON THE EAST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH $40^{\circ}38'28''$ EAST A DISTANCE OF 31.82 FEET TO A POINT ON THE SOUTH LINE OF AN EAST-WEST ALLEY; THENCE SOUTH $40^{\circ}36'28''$ EAST A DISTANCE OF 159.69 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH $40^{\circ}36'28''$ EAST A DISTANCE OF 123.81 FEET TO A POINT ON THE WEST LINE OF LOT 53 OF SAID LINDA LOMA ADDITION; THENCE SOUTH $40^{\circ}36'28''$ EAST A DISTANCE OF 252.08 FEET; THENCE SOUTH $39^{\circ}18'08''$ WEST A DISTANCE OF 25.09 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF $9^{\circ}57'46''$ AND A RADIUS OF 659.00 FEET, SAID POINT BEING 9.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MAIN RAILROAD TRACK; THENCE NORTHWESTERLY AND PARALLEL WITH SAID MAIN RAILROAD TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 114.59 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH $45^{\circ}42'59''$ WEST, 114.44 FEET TO

THE END OF SAID CURVE; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 100.75 FEET TO A POINT ON THE WEST LINE OF LOT 58 OF SAID LINDA LOMA ADDITION; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 102.25 FEET TO A POINT ON THE EAST LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 2.30 FEET TO A POINT 9.00 FEET SOUTHWESTERLY MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH 42°49'38" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 4.62 FEET TO A POINT ON THE NORTH LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH 42°49'38" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 14.20 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE SOUTHWESTERLY AND HAVING A CENTRAL ANGLE OF 4°45'26" AND A RADIUS OF 481.48 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 39.98 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 45°12'17" WEST, 39.97 FEET TO THE END OF SAID CURVE; THENCE NORTH 47°35'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 39.92 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH 89°34'34" WEST, ALONG THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5, A DISTANCE OF 9.57 FEET; THENCE NORTH 40°52'00" WEST A DISTANCE OF 100.74 FEET TO A POINT 9.50 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH 40°52'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 178.88 FEET TO A POINT ON THE WEST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH 0°32'10" EAST, ALONG THE WEST LINE OF LOT 7 OF SAID BLOCK 5, A DISTANCE OF 40.02 FEET; THENCE NORTH 55°56'12" WEST A DISTANCE OF 80.18 FEET TO A POINT OF THE EAST LINE OF LOT 1 OF SAID BLOCK 6; THENCE NORTH 0°32'10" WEST, ALONG THE EAST LINE OF LOT 1 OF SAID BLOCK 6, A DISTANCE OF 65.81 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 1.815 ACRES, MORE OR LESS. SAID PARCEL IS SUBJECT TO AN EASEMENT FOR STREET RIGHT OF WAY FOR RELOCATED 3RD STREET CONNECTION TO HARRY LANGDON BOULEVARD. SAID EASEMENT IS RECORDED IN BOOK 101, PAGE 24609 IN THE OFFICE OF THE POTTAWATTAMIE COUNTY RECORDER. SAID PARCEL IS ALSO SUBJECT TO ANY AND ALL OTHER EXISTING EASEMENTS, RESERVATIONS AND/OR RIGHTS-OF-WAY WHATSOEVER

NOTE: THE EAST LINE OF LOT 1 OF SAID BLOCK 6 IS ASSUMED TO BEAR NORTH 0°32'10" WEST FOR THIS DESCRIPTION.

Return To: William Hughes, Esq, Stuart Tinley Law Firm, LLP, Qwest Building, 310 W. Kanesville Blvd., 2nd Floor, P.O. Box 398, Council Bluffs, Iowa 51502-0398
Preparer: Roger L. Sawatzke, Attorney 229 South Main Street Council Bluffs Iowa 51503
Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South 3rd Street, Council Bluffs, Iowa 51503

BILL OF SALE

For the consideration of One Dollar and other valuable consideration, Union Pacific Railroad Company, a Delaware Corporation ("Seller"), does hereby sell, transfer and assign to Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa ("Buyer"), all of its right, title and interest in the following described personal property located in Pottawattamie County, State of Iowa:

All rail track, ballast, switches, ties, signals and other railroad equipment now located on the following described real estate:

See Exhibit "A" attached hereto and incorporated herein by this reference.

SELLER HEREBY SELLS, TRANSFERS AND ASSIGNS SAID PERSONAL PROPERTY IN "AS IS" CONDITION. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE IN REGARD TO SAID PERSONAL PROPERTY ARE HEREBY EXCLUDED. THERE ARE NO WARRANTIES OF FITNESS WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.

Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as the appropriate gender, according to the context.

Dated: _____, 2009

Union Pacific Railroad Company,
a Delaware Corporation, Seller

By: _____

Tony K. Love, Assistant Vice President,
Real Estate Department

Dated: _____, 2009

RED GIANT OIL COMPANY,
a Nebraska Corporation authorized to do business in
Iowa, Buyer

By: _____
Sherryl Bills, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

This instrument was acknowledged before me on _____, 2009, by Tony K. Love, as
Assistant Vice President, Real Estate Department of Union Pacific Railroad Company, a
Delaware Corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

This instrument was acknowledged before me on _____, 2009, by Sherryl Bills, President
of Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa.

Notary Public

EXHIBIT "A"

PARCEL 1:

A parcel of land located in part of Lots 6 and 7; Block 5 of the Casady's Addition to the City of Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the southwest corner of said Lot 7; thence North 0°32'10" West, along the East right of way line of vacated High Street and along the west line of said Lot 7, a distance of 30.79 feet to the Point of Beginning; thence continuing North 0°32'10" West, along said east right of way line and along the west line of said Lot 7, a distance of 40.02 feet to a point on the southwesterly right of way line of the Chicago and North Western Railway Company, predecessor to Union Pacific Railroad Company; thence South 40°52'00" East, along said southwesterly right of way line, a distance of 178.88 feet; thence North 50°46'11" West a distance of 150.62 feet to the Point of Beginning.

Containing 0.053 acres more or less

PARCEL 2:

Also A parcel of land located in part of Lots 1, 12, 13, 14, 15 and 16, all in Block 6 of Casady's Addition, Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the northeast corner of said Lot 1 and Point of Beginning; thence South 0°32'10" East, along the west right of way line of vacated High Street and along the east line of said Lot 1, a distance of 65.81 feet to a point on a non-tangent curve concave southwesterly and having a radius of 457.46 feet and a central angle of 29°36'34", a radial line through said point bears North 29°02'21" East; thence northwesterly, along said curve, an arc length of 236.41 feet and having a chord bearing and distance of North 75°45'56" West, 233.78 feet to the end of said curve; thence South 89°25'47" West a distance of 164.94 feet to the Beginning of a tangent circular curve concave northeasterly and having a radius of 497.46 feet and a central angle of 9°11'13"; thence northwesterly, along said curve, an arc length of 79.76 feet and having a chord bearing and distance of North 85°58'37" West, 79.68 feet to a point on the east right of way line of vacated 3rd Street and also, being the west line of said Lot 12; thence north 0°36'02" West, along said east right of way line and along the west line of said Lot 12, a distance of 0.89 feet to the northwest corner of said Lot 12; thence North 89°34'34" East, along the south right of way line of 18th Avenue and along the north line of said Block 6, a distance of 470.43 feet to the Point of Beginning.

Containing 0.169 acres more or less

NOTE: Parcels 1 and 2 as described above are one and the same parcels of land as described on the Exhibit A attached to the Easement Deed dated December 10, 1999, by and between Midwest Walnut Company, grantor, and Union Pacific Railroad Company, grantee, recorded on September 20, 2000, in the office of the Recorder of Pottawattamie County, Iowa at Book 101, Page 13179 ("Easement Decd"), and as Parcels "A" and "B" as described on the Plat of Survey

attached to the Easement Deed which is dated October 21, 1999, and was prepared by Carl H. Rogers, Jr.

PARCEL 3:

A tract of land lying in a part of 18th Avenue right of way in Casady's Addition to the City of Council Bluffs, Iowa more particularly described as follows:

Commencing at the Southeast corner of Lot 4, Block 2 of said Casady's Addition and point of beginning of said permanent easement; thence South 81°24'54" East a distance of 147.33 feet; thence North 89°25'47" East a distance of 164.94 feet to the beginning of a tangent circular curve concave southwesterly and having a radius of 507.46 feet and a central angle of 24°00'04"; thence southeasterly, along said curve, an arc length of 212.57 feet and having a chord bearing and distance of South 78°34'11" East, 211.02 feet to a point on the South right of way line of said 18th Avenue and also, being the North line of Block 6 of said Casady's Addition; thence South 89°34'34" West, along said South right of way line and along the North line of said Block 6, a distance of 450.78 feet to the Northwest corner of Lot 12 of said Block 6; thence South 0°36'02" East, along the West line of said Lot 12, a distance of 0.89 feet to a point on a non-tangent curve concave northeasterly and having a radius of 497.46 feet and a central angle of 5°52'58", a radial line through said point bears South 8°37'00" West; thence northwesterly, along said curve, an arc length of 51.08 feet and having a chord bearing and distance of North 78°26'31" West, 51.05 feet to the end of said curve; thence North 45°34'19" West a distance of 79.74 feet to a point on the North right of way line of said 18th Avenue and also, being the South line of said Lot 4; thence North 89°29'39" East, along said North right of way line and along the South line of said Lot 4, a distance of 40.26 feet to the point of beginning of said permanent easement. Said permanent easement contains 21,401 square feet, more or less, or 0.491 of an acre, more or less.

NOTE: The South line of said Lot 4 is assumed to bear North 89°29'39" East for this description.

FURTHER NOTE: Parcel 3 as described above is one and the same parcel of land as described on the Exhibit "A" attached to the Easement for Railroad Right of Way dated March 23, 2000, by and between City of Council Bluffs, Iowa, grantor, and Union Pacific Railroad Company, grantee, recorded on April 4, 2000, in the office of the Recorder of Pottawattamie County, Iowa as Instrument No. 16452, Book 100, Page 45956.

PARCEL 4:

A PARCEL OF LAND LOCATED IN PART OF BLOCKS 1, 3, 5 AND 10, AND A PART OF ALLEYS AND PART OF VACATED ALLEYS IN SAID BLOCKS IN CASADY'S ADDITION, AND PARTS OF 18TH AVENUE, SOUTH AVENUE AND RELOCATED 3RD STREET CONNECTION AND ALSO, PARTS OF VACATED 17TH AVENUE, VACATED 19TH AVENUE AND VACATED HIGH STREET, AND PART OF LOT 53 AND PART OF LOT 58 IN LINDA LOMA ADDITION, COUNCIL BLUFFS, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 6 IN SAID

CASADY'S ADDITION AND POINT OF BEGINNING; THENCE NORTH 38°11'17" WEST A DISTANCE OF 83.49 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 3, SAID POINT BEING 10.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY OF TWO PARALLEL RAILROAD TRACKS (THE MOST NORTHEASTERLY OF WHICH IS THE MAIN RAILROAD TRACK); THENCE NORTH 40°47'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 507.48 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 13°13'08" AND A RADIUS OF 710.00 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK AND ALONG SAID CURVE, AN ARC LENGTH OF 163.81 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 34°10'26" WEST, 163.44 FEET TO THE END OF SAID CURVE; THENCE NORTH 27°33'50" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 3.70 FEET TO A POINT ON THE WEST LINE OF LOT 11 OF SAID BLOCK 1; THENCE NORTH 0°36'02" WEST, ALONG THE WEST LINE OF LOTS 11 AND 12 OF SAID BLOCK 1, A DISTANCE OF 84.41 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 18°24'10" AND A RADIUS OF 595.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC LENGTH OF 191.11 FEET AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 33°32'05" EAST, 190.29 FEET TO THE END OF SAID CURVE; THENCE SOUTH 42°44'10" EAST A DISTANCE OF 136.46 FEET TO A POINT ON THE SOUTH LINE OF LOT 7 OF SAID BLOCK 1; THENCE SOUTH 40°35'09" EAST A DISTANCE OF 86.36 FEET TO A POINT ON THE NORTH LINE OF LOT 15 OF SAID BLOCK 3; THENCE SOUTH 40°40'21" EAST A DISTANCE OF 140.58 FEET TO A POINT ON THE WEST LINE OF A NORTH-SOUTH ALLEY; THENCE SOUTH 40°38'59" EAST A DISTANCE OF 53.31 FEET TO A POINT ON THE NORTH LINE OF LOT 3 OF SAID BLOCK 3; THENCE SOUTH 40°41'43" EAST A DISTANCE OF 89.12 FEET TO A POINT ON THE NORTH LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH 40°37'27" EAST A DISTANCE OF 58.00 FEET TO A POINT ON THE EAST LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH 40°30'49" EAST A DISTANCE OF 117.25 FEET TO A POINT ON THE NORTH LINE OF LOT 8 OF SAID BLOCK 5; THENCE SOUTH 40°38'57" EAST A DISTANCE OF 180.35 FEET TO A POINT ON THE EAST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH 40°38'28" EAST A DISTANCE OF 31.82 FEET TO A POINT ON THE SOUTH LINE OF AN EAST-WEST ALLEY; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 159.69 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 123.81 FEET TO A POINT ON THE WEST LINE OF LOT 53 OF SAID LINDA LOMA ADDITION; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 252.08 FEET; THENCE SOUTH 39°18'08" WEST A DISTANCE OF 25.09 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 9°57'46" AND A RADIUS OF 659.00 FEET, SAID POINT BEING 9.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MAIN RAILROAD TRACK; THENCE NORTHWESTERLY AND PARALLEL WITH SAID MAIN RAILROAD TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 114.59 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 45°42'59" WEST, 114.44 FEET TO

THE END OF SAID CURVE; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 100.75 FEET TO A POINT ON THE WEST LINE OF LOT 58 OF SAID LINDA LOMA ADDITION; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 102.25 FEET TO A POINT ON THE EAST LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 2.30 FEET TO A POINT 9.00 FEET SOUTHWESTERLY MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH 42°49'38" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 4.62 FEET TO A POINT ON THE NORTH LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH 42°49'38" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 14.20 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE SOUTHWESTERLY AND HAVING A CENTRAL ANGLE OF 4°45'26" AND A RADIUS OF 481.48 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 39.98 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 45°12'17" WEST, 39.97 FEET TO THE END OF SAID CURVE; THENCE NORTH 47°35'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 39.92 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH 89°34'34" WEST, ALONG THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5, A DISTANCE OF 9.57 FEET; THENCE NORTH 40°52'00" WEST A DISTANCE OF 100.74 FEET TO A POINT 9.50 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH 40°52'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 178.88 FEET TO A POINT ON THE WEST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH 0°32'10" EAST, ALONG THE WEST LINE OF LOT 7 OF SAID BLOCK 5, A DISTANCE OF 40.02 FEET; THENCE NORTH 55°56'12" WEST A DISTANCE OF 80.18 FEET TO A POINT OF THE EAST LINE OF LOT 1 OF SAID BLOCK 6; THENCE NORTH 0°32'10" WEST, ALONG THE EAST LINE OF LOT 1 OF SAID BLOCK 6, A DISTANCE OF 65.81 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 1.815 ACRES, MORE OR LESS. SAID PARCEL IS SUBJECT TO AN EASEMENT FOR STREET RIGHT OF WAY FOR RELOCATED 3RD STREET CONNECTION TO HARRY LANGDON BOULEVARD. SAID EASEMENT IS RECORDED IN BOOK 101, PAGE 24609 IN THE OFFICE OF THE POTTAWATTAMIE COUNTY RECORDER. SAID PARCEL IS ALSO SUBJECT TO ANY AND ALL OTHER EXISTING EASEMENTS, RESERVATIONS AND/OR RIGHTS-OF-WAY WHATSOEVER

NOTE: THE EAST LINE OF LOT 1 OF SAID BLOCK 6 IS ASSUMED TO BEAR NORTH 0°32'10" WEST FOR THIS DESCRIPTION.

MUTUAL RELEASE OF ALL CLAIMS

THIS MUTUAL RELEASE OF ALL CLAIMS, hereinafter referred to as *Release*, is made and entered into this 16th day of October, 2009, by and between Union Pacific Railroad Company, a Delaware Corporation, hereinafter referred to as *UP*, and Midwest Walnut Company of Iowa, an Iowa Corporation, hereinafter referred to as *MW*, and Red Giant Oil Company, a Nebraska Corporation a/k/a Searle Petroleum, hereinafter referred to as *RG*.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is hereby agreed by and between the parties as follows:

SECTION I.

1. *MW* hereby acknowledges payment of the sum of one hundred thousand dollars (\$100,000.00) in consideration of which payment *MW* hereby releases, acquits and forever discharges *UP* and *RG*, their respective agents, employees, representatives, subsidiaries, and all other persons, firms, and Corporations from any and all liability whatsoever, including all claims, demands, and causes of action of every nature affecting *MW*, which it may have, or ever claim to have by reason of:

a. All claims that have been alleged by *MW* in a lawsuit filed by *MW* in the Iowa District Court in and for Pottawattamie County Iowa, case number EQCV 90247 (the "Lawsuit"), and all claims that could have been brought therein; and

b. All claims, demands, and causes of action pertaining to all industry track agreements between *MW* and *UP*, entered into at any time prior to the date of this Release.

2. In consideration of the payments and mutual promises provided for herein, *UP* hereby releases, acquits and forever discharges *MW*, *RG*, and their respective agents, employees, representatives, subsidiaries, and all other persons, firms and Corporations from any and all

liability whatsoever, including all claims, demands, and causes of action of every nature affecting *UP*, which it may have, or ever claim to have by reason of:

a. All claims that have been alleged by *UP* resulting in a Counter-Claim filed by *UP* in the Lawsuit, and all claims that could have been brought therein; and

b. All claims, demands, and causes of action pertaining to all industry track agreements between *MW* and *UP*, and *UP* and *RG*, entered into at any time prior to the date of this Release.

3. In consideration of the payments and mutual promises provided for herein, *RG* hereby releases, acquits and forever discharges *MW*, *UP*, and their respective agents, employees, representatives and subsidiaries, and all other persons, firms and Corporations from any and all liability whatsoever, including all claims, demands, and causes of action of every nature affecting *RG*, which it may have, or ever claim to have by reason of:

a. All claims that have been alleged by *RG* resulting in a Counter-Claim filed by *RG* in the Lawsuit, and all claims that could have been brought therein; and

b. All claims, demands, and causes of action pertaining to all industry track agreements between *RG* and *UP*, and *RG* and *MW*, entered into at any time prior to the date of this Release.

SECTION II.

As a further consideration of said payments and the mutual promises included herein, the parties further agree:

4. That this Release covers all injuries and damages, whether known or not and which any party to this Release may have against any other party to this Release regarding the claims made by *UP*, *MW*, and *RG* in the Lawsuit.

5. That this Release is executed as a compromise settlement of disputed claims,

liability for which is expressly denied by the party and/or parties released, and the payment of the above sums does not constitute an admission of liability on the part of any person or entity.

6. The parties to this *Release* are executing this Release solely in reliance upon their own knowledge, belief and judgment and not upon any representations made by any party released or others in its behalf.

7. *MW* shall dismiss with prejudice, all claims, demands, and causes of action it filed in the Lawsuit. *UP* and *RG* shall dismiss with prejudice, their respective claims and counterclaims filed therein. Each party shall bear its own costs and receipt out for its own costs.

SECTION III

8. This Release shall be effective and binding upon the parties hereto upon *MW*'s receipt of the payment specified in Paragraph 1 hereof and the occurrence of the "Effective Date", as that term is defined in a Settlement Agreement dated of even date herewith entered into by and among the same parties who have entered into this Release.

SECTION IV

9. This *Release* shall be governed by and construed in accordance with the laws of the State of Iowa.

10. Each of the undersigned hereby acknowledges receipt of a copy of this Release.

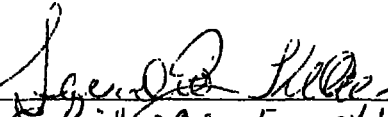
11. EACH OF THE UNDERSIGNED HEREBY ACKNOWLEDGES THEY HAVE READ THE FOREGOING RELEASE, AND UNDERSTAND ITS TERMS AND FREELY AND VOLUNTARILY SIGN THE SAME.

12. Words and phrases herein shall be construed as in the singular or plural number.

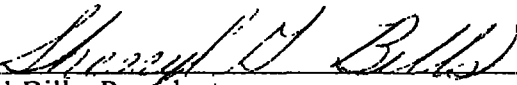
and as masculine, feminine or neuter gender, according to the context.

Executed in Triplicate on this 16th day of October, 2009, to be effective on the satisfaction of the conditions specified in Paragraph 8 hereof.

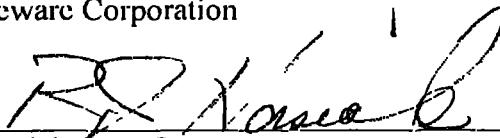
Midwest Walnut Company of Iowa,
An Iowa Corporation

By: 
Its: Chief Operating Officer

Red Giant Oil Company a/k/a Searle Petroleum,
A Nebraska Corporation

By: 
Sherryl Bills, President

Union Pacific Railroad Company,
A Delaware Corporation

By: 
Ray Hasiak, Law Department

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

On this 9th day of October, 2009, before me, the undersigned, a Notary Public in and for Douglas County, State of Nebraska, personally appeared Cerald W. Keller, in his capacity as Chief Operating Officer of MW, to me known to be the identical person named in and who executed the foregoing instrument and acknowledges that in his capacity as a corporate officer of MW he is authorized to execute this binding document on behalf of said corporation and did so as his voluntary act and deed.



Angela Stone
NOTARY PUBLIC

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

On this 16th day of October, 2009, before me, the undersigned, a Notary Public in and for Douglas County, State of Nebraska, personally appeared **Sherryl Bills**, in her capacity as President of RG to me known to be the identical person named in and who executed the foregoing instrument and acknowledges that she executed the same as her voluntary act and deed.



Angela Stone
NOTARY PUBLIC

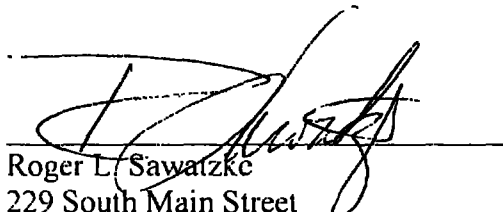
STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

On this 16th day of October, 2009, before me, the undersigned, a Notary Public in and for Pottawattamie County, State of Iowa, personally appeared **Ray Hasiak**, in his capacity as attorney for and authorized agent of UP to me known to be the identical person named in and who executed the foregoing instrument and acknowledges that he executed the same as his voluntary act and deed.

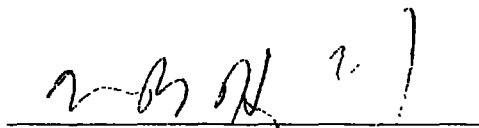


Angela Stone
NOTARY PUBLIC

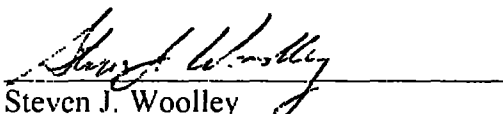
The foregoing Settlement Agreement has been approved as to form and content by each of the undersigned attorneys.



Roger L. Sawatzke
229 South Main Street
Council Bluffs, IA. 51503
Ph: 712-325-4000
Fx: 712-325-5555
ATTORNEY FOR DEFENDANT
UNION PACIFIC RAILROAD COMPANY



William R. Hughes, Jr.
Stuart Tinley Peters Thorn & Hughes
310 W. Kanessville Blvd. 2nd Floor
P.O. Box 398
Council Bluffs, IA. 51502-0398
ATTORNEY FOR DEFENDANT
RED GIANT OIL COMPANY a/k/a
SEARLE PETROLEUM,
a Nebraska corporation



Steven J. Woolley
McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O.
11404 West Dodge Road, Suite 500
Omaha, NE 68154-2584
ATTORNEY FOR PLAINTIFF
MIDWEST WALNUT COMPANY OF IOWA

OPERATING AGREEMENT - AMENDED

THIS OPERATING AGREEMENT ("**Operating Agreement**") is entered into by and between MIDWEST WALNUT COMPANY OF IOWA, an Iowa corporation ("**Midwest**") and RED GIANT OIL COMPANY, a Nebraska corporation authorized to do business in Iowa which from time to time does business under the name of Searle Petroleum Company ("**Red Giant**").

RECITALS:

This Agreement is made with reference to the following facts and objectives:

A. Red Giant's business property is located to the immediate north of Midwest's business property, both being located in Council Bluffs, Iowa.

B. Midwest is a manufacturer of wood products made from walnut trees ("**Midwest's Business**"). Red Giant is an independent supplier of industrial lubricants and producer of locomotion and specialized engine oils ("**Red Giant's Business**").

C. Until the Effective Date, Red Giant has leased two parallel tracks from Union Pacific Railroad Company ("**UP**"), which tracks are located on the northeast border of Red Giant's and Midwest's business premises. The two tracks merge into one track just northwest of Tostevin Street, a/k/a South Avenue, Council Bluffs, Iowa, and continue as a single track across Tostevin Street, a/k/a South Avenue, for a relatively short distance at which point the track ends ("**UP Track**").

D. The UP Track is connected by a single railway track (the "**Connecting Track**") to railway tracks owned by Iowa Interstate Railroad, Ltd., a Delaware corporation ("**IAIS**") which tracks are located to the south and west of Red Giant's and Midwest's business premises ("**IAIS Track**"). That portion of the UP Track which extends to the southeast from the point where it merges with the Connecting Track is hereafter referred to as the "**Southeast Track**".

E. The Connecting Track crosses and is located on or adjacent to real estate owned by Midwest. The legal description for the just referenced land that is owned by Midwest and upon which a portion of the Connecting Track lies consists of three connected parcels referred to as Parcels A, B and C with Parcel C being the middle parcel. The legal description for Parcel C has been determined by a surveyor and is included in the legal description of the land subject to and which will be conveyed by the "Second Deed", as that term is hereafter defined. Parcels A and B to the Connecting Track are legally described as follows:

Parcel A:

A parcel of land located in part of Lots 1, 12, 13, 14, 15 and 16, all in Block 6 of Casady's Addition, Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the northeast corner of said Lot 1 and Point of Beginning; thence South 0°32'10" East, along the west right of way line of vacated High Street and along the east line of said Lot 1, a distance of 65.81 feet to a point on a non-tangent curve concave southwesterly and having a radius of 457.46 feet and a central angle of 29°36'34", a radial line through said point bears North 29°02'21" East; thence northwesterly, along said curve, an arc length of 236.41 feet and having a chord bearing and distance of North 75°45'56" West, 233.78 feet to the end of said curve; thence South 89°25'47" West a distance of 164.94 feet to the point of Beginning of a tangent circular curve concave northeasterly and having a radius of 497.46 feet and a central angle of 9°11'13"; thence northwesterly, along said curve, an arc length of 79.76 feet and having a chord bearing and distance of North 85°58'37" West, 79.68 feet to a point on the east right of way line of vacated 3rd Street and also, being the west line of said Lot 12; thence north 0°36'02" West, along said east right of way line and along the west line of said Lot 12, a distance of 0.89 feet to the northwest corner of said Lot 12; thence North 89°34'34" East, along the south right of way line of 18th Avenue and along the north line of said Block 6, a distance of 470.43 feet to the Point of Beginning.

Containing 0.169 acres more or less.

Parcel B:

A parcel of land located in part of Lots 6 and 7, Block 5 of the Casady's Addition to the City of Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the southwest corner of said Lot 7; thence North 0°32'10" West, along the east right of way line of vacated High Street and along the west line of said Lot 7, a distance of 30.79 feet to the Point of Beginning; thence continuing North 0°32'10" West, along said east right of way line and along the west line of said Lot 7, a distance of 40.02 feet to a point on the southwesterly right of way line of the Chicago and North Western Railway Company, predecessor to Union Pacific Railroad Company; thence South 40°52'00" East, along said southwesterly right of way line, a distance of 178.88 feet; thence North 50°46'11" West a distance of 150.62 feet to the Point of Beginning.

Containing 0.053 acres more or less.

F. In varying degrees, both Midwest's Business and Red Giant's Business are dependent upon the availability of railcars provided to them from third parties onto the Connecting Track and the parties hereto wish to enter into this Agreement to establish their rights and obligations relative to the same.

G. Midwest, Red Giant and UP have entered into a Settlement Agreement - Amended for the purpose of settling certain therein described disputes (the "Settlement Agreement"). The Settlement Agreement will be binding upon the parties to the same upon

written approval of its terms by a Vice President of UP and receipt of the written approval by STB (as that term is defined in the Settlement Agreement) of the STB Application (as that term is defined in the Settlement Agreement). The date of the last to occur of the two conditions specified in the preceding sentence is referred to in the Settlement Agreement as the "Effective Date." The Effective Date of the Settlement Agreement shall also be the Effective Date of this Agreement.

H. In pertinent part, the Settlement Agreement requires UP, IAIS, Red Giant and Midwest to file the STB Application with the STB for the purpose of specifying that IAIS will acquire UP's operating rights and the full common carrier obligation with respect to the Connecting Track and the UP Track.

AGREEMENT:

NOW, THEREFORE, in order to consummate the intent of the parties as set forth in the foregoing recitals, which recitals are made a contractual part of this Agreement, and in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

1. First Quit Claim Deed. Upon payment by UP and/or Red Giant to Midwest in the amount of \$100,000.00 in good funds (as and when required by the Settlement Agreement), Midwest shall convey to Red Giant by way of quit claim deed ("**First Deed**") all of its right, title and interest in and to the real estate described within the "**MWC First Deed**", as that term is defined within the Settlement Agreement (the "**First Deed Real Estate**"). Red Giant shall be entitled to record the First Deed immediately upon its receipt of the same. Midwest shall have no obligation to pay any portion of the recording or transfer tax fees that will be payable upon the recording of the First Deed. Notwithstanding the fact the conveyance will be by way of a quit claim deed, Midwest shall indemnify and hold Red Giant harmless from any real estate taxes and special assessments assessed against that portion of the First Deed Real Estate which is previously described herein as Parcels A and B to the Connecting Track (the "**MWC First Deed Real Estate**"), all of which shall be prorated as of the Effective Date, and from any liens that may exist or be placed upon the First Deed Real Estate on or before the Effective Date arising from or related to actions or inactions of Midwest.

2. Second Quit Claim Deed. Contemporaneously with the delivery of the First Deed to Red Giant, Midwest shall convey to Red Giant by way of quit claim deed ("**Second Deed**") all of its right, title and interest in and to the real estate described within the "**MWC Second Deed**", as that term is defined within the Settlement Agreement (the "**Second Deed Real Estate**"). Red Giant shall be entitled to record the Second Deed immediately upon its receipt of the same. Midwest shall have no obligation to pay any portion of the recording or transfer tax fees that will be payable upon the recording of the Second Deed. Notwithstanding the fact the conveyance will be by way of a quit claim deed, Midwest shall indemnify and hold Red Giant harmless from any and all real estate taxes and special assessments otherwise payable by Midwest and which were assessed before the Effective Date against that portion of the Second Deed Real Estate which (a) is previously described herein as Parcel C to the Connecting Track and (b) which was, prior to the delivery of the Second Deed, owned by and taxed to Midwest (collectively the "**MWC Second Deed Real Estate**"), all of which shall be prorated as of the Effective Date, and

from any liens that may exist or be placed upon the Second Deed Real Estate on or before the Effective Date arising from or related to actions or inactions of Midwest.

3. Easement. Contemporaneously with the delivery of the First Deed and Second Deeds (the "**Deeds**") to Red Giant from Midwest, Red Giant shall execute and deliver to Midwest a written permanent, perpetual and non-exclusive easement across the Connecting Track Real Estate (as that term is hereinafter defined), and that portion of the Second Deed Real Estate which is hereafter defined as the UP South Track Real Estate, for the placement, movement and utilization of railcars for all purposes required by Midwest's Business and the business of its successors and assigns ("**Easement**"). The Easement shall be upon terms and provisions substantially the same as the form of Easement Agreement that is attached hereto as Exhibit A. Midwest shall be entitled to record the same immediately upon its receipt of the same. Red Giant shall have no obligation to pay any portion of the recording or transfer tax fees that will be payable upon the recording of the Easement.

4. Midwest Options.

4.1 Red Giant does hereby give and grant to Midwest and its successors and assigns the sole, exclusive and irrevocable option during the period commencing with the Effective Date and continuing into perpetuity ("**Midwest Option Period**") to purchase the First Deed Real Estate, that portion of the Second Deed Real Estate which is previously described herein as Parcel C to the Connecting Track (collectively the "**Connecting Track Real Estate**"), and all railroad ties, rails, ballast, track, switches, railroad equipment and signals located thereon ("**Connecting Track Equipment**") for the sum of One Dollar (\$1.00), payable at the time of the closing of the transaction ("**First Midwest Option**"). The First Midwest Option shall be exercised by written notice to Red Giant at any time within Midwest's Option Period but, notwithstanding the generality of the foregoing, only upon the occurrence of any one or more of the following:

- a. Abandonment of the Connecting Track by Red Giant, its successors or assigns;
- b. Termination of Red Giant's or its successors' or assigns' use of the Connecting Track;
- c. Termination of Red Giant's Business except by sale of the same to a successor who continues to operate a business requiring the continued use of the Connecting Track;
- d. Sale, lease, assignment or other transfer of any of Red Giant's right, title or interest in and to the Connecting Track Real Estate, except (i) as part of the sale of all of Red Giant's assets to a successor who continues to operate a business requiring the continued use of the Connecting Track, or (ii) any transfer of fee title ownership in and to the Connecting Track Real Estate to another entity wholly owned by Red Giant;
- e. Sale, lease, assignment or other transfer of any of Red Giant's interest in and to the Connecting Track, the Connecting Track Equipment, or any part of either of the same, except (i) as part of the sale of all of Red Giant's assets to a successor

who continues to operate a business requiring the continued use of the Connecting Track, or (ii) any transfer of full ownership of the Connecting Track and Connecting Track Equipment to another entity wholly owned by Red Giant; or

- f. Sale, lease, assignment or other transfer of any of Red Giant's right, title or interest in and to that Easement Deed dated December, 1999, recorded September 20, 2000, at Book 101, Page 1313 in the office of the Recorder of Pottawattamie County, Iowa ("**Easement Deed**"), except (i) as part of the sale of all of Red Giant's assets to a successor who continues to operate a business requiring the continued use of the Connecting Track, or (ii) any transfer of fee title ownership in and to the Connecting Track Real Estate to another entity wholly owned by Red Giant.

For purposes of this paragraph, Red Giant or its successors and assigns shall be deemed to have abandoned the Connecting Track if it (i) does not use the Connecting Track for its business purposes within any twelve (12) month period and, during that same twelve (12) month period has not timely performed or has not been required to or has not needed to perform the movement of Midwest railcars as determined pursuant to the terms of this Agreement, or (ii) fails to maintain the Connecting Track in the manner required by Paragraph 6 of this Agreement for a continuous six (6) month period.

4.2 Red Giant does hereby give and grant to Midwest and its successors and assigns the sole, exclusive and irrevocable option during the Midwest Option Period to purchase all or any part of the Second Deed Real Estate which lies south of the southern edge of Eighteenth Ave., Council Bluffs, Iowa, as located as of the Effective Date (the "**UP South Track Real Estate**"), and all railroad ties, rails, ballast, track, switches, railroad equipment and signals located thereon ("**UP South Track Equipment**") for the sum of One Dollar (\$1.00), payable at the time of the closing of the transaction ("**Second Midwest Option**"). The Second Midwest Option shall be exercised by written notice to Red Giant at any time within Midwest's Option Period but, notwithstanding the generality of the foregoing, only upon the occurrence of any one or more of the following:

- a. Abandonment of the track that is located on the UP South Track Real Estate (the "**UP South Track**") by Red Giant, its successors or assigns;
- b. Termination of Red Giant's or its successors' or assigns' use of the UP South Track;
- c. Termination of Red Giant's Business except by sale of the same to a successor who continues to operate a business requiring the continued use of the UP South Track;
- d. Sale, lease, assignment or other transfer of any of Red Giant's right, title or interest in and to the UP South Track Real Estate, or any part thereof, except (i) as part of the sale of all of Red Giant's assets to a successor who continues to operate a business requiring the continued use of the UP South Track, or (ii) any

transfer of fee title ownership in and to the UP South Track Real Estate to another entity wholly owned by Red Giant; or

- e. Sale, lease, assignment or other transfer of Red Giant's right, title or interest in and to the UP South Track, the UP South Track Equipment, or any part of either of the same, except (i) as part of the sale of all of Red Giant's assets to a successor who continues to operate a business requiring the continued use of the UP South Track, or (ii) any transfer of full ownership of the UP South Track and UP South Track Equipment to another entity wholly owned by Red Giant.

For purposes of this paragraph, Red Giant and its successors and assigns shall be deemed to have abandoned the UP South Track if it (i) does not use the UP South Track for its business purposes within any twelve (12) month period and, during that same twelve (12) month period has not timely performed or has not been required to or has not needed to perform the movement of MWC railcars as determined pursuant to the terms of this Agreement, or (ii) fails to maintain the UP South Track in the manner required by Paragraph 6 of this Agreement for a continuous six (6) month period.

4.3 Notice of exercise of either the First Midwest Option or the Second Midwest Option (collectively the "**Midwest Options**") shall be given or made in writing and delivered or mailed, first class, postage prepaid, to Red Giant or its successors or assigns. In the event either of the Midwest Options is exercised, Midwest shall set a time and place for closing of the transaction, but in any event, such a closing shall take place on or before one hundred twenty (120) days after the exercise of either of the Midwest Options, or the furnishing of a preliminary title insurance commitment by a reputable title company guaranteeing marketable title to applicable real estate in Midwest, free and clear of all liens and encumbrances other than the Easement, whichever date occurs later. At closing, Red Giant or its successors or assigns shall convey the applicable real estate to Midwest by way of quit claim deed, however, all liens on the applicable real estate shall be paid by Red Giant or its successors or assigns and released at closing, all taxes and special assessments, due on or before the closing date shall be paid by Red Giant or its successors or assigns and current taxes and special assessments shall be prorated as of the date of such closing between Red Giant or its successors or assigns and Midwest. At closing, Red Giant shall convey the Connecting Track Equipment and/or the UP South Track Equipment (whichever is applicable) to Midwest by way of quit claim bill of sale, however, Red Giant or its successors or assigns shall indemnify and hold Midwest harmless from liens, claims or encumbrances on or against the same and any personal property taxes assessed against the same shall be prorated between the parties as of the date of closing. Upon delivery of either of the deeds and bills of sale previously specified within this Section 4 to Midwest, Red Giant or its successors or assigns shall vacate and surrender the quiet and peaceful possession of the applicable real estate and equipment to Midwest. Midwest shall then have the right to free and unfettered use of the real estate described within the applicable deed and of the railroad track and related property described within the applicable bill of sale.

4.4 Midwest shall have the right to assign either or both of the Midwest Options in whole or in part to its business successors and assigns.

4.5 Red Giant shall not mortgage or otherwise encumber the title to the Connecting Track Real Estate or the UP South Track Real Estate, nor shall it allow any lien to be placed thereon other than Permitted Liens (as that term is hereafter defined) (the "**Lien Prohibition**"). No such mortgage or other encumbrance will be a valid enforceable lien on any part of the Connecting Track Real Estate or the UP South Track Real Estate without Midwest's prior, written and recorded consent to the same, which consent may be withheld or granted by Midwest in its sole and absolute discretion. For purposes of this Agreement, the term "**Permitted Liens**" shall mean and include only the following:

- a. Liens for current taxes not delinquent or for taxes being contested in good faith and by appropriate proceedings, and with respect to which adequate reserves have been established, and are being maintained, in accordance with generally accepted accounting principles ("**GAAP**"),
- b. Liens arising in the ordinary course of business for sums being contested in good faith and by appropriate proceedings, and with respect to which adequate reserves have been established, and are being maintained, in accordance with GAAP, and
- c. Mechanic's, worker's, materialmen's, warehousemen's, landlord's and other like liens arising in the ordinary course of business in respect of obligations which are not delinquent or which are being contested in good faith and by appropriate proceedings, and with respect to which adequate reserves have been established, and are being maintained, in accordance with GAAP.

4.6 Contemporaneously with the execution and delivery of the deeds required by paragraphs 1 and 2 above to Red Giant, Midwest and Red Giant shall execute a "Memorandum of Option" in recordable form describing the Midwest Options and specifying the Lien Prohibition, all in substantially the same as the form of Memorandum of Option and Lien Prohibition that is attached hereto as Exhibit B. Midwest shall then be entitled to record the same.

5. Red Giant's Option.

5.1 Midwest does hereby give and grant to Red Giant and its successors and assigns the sole, exclusive and irrevocable option during the period commencing with the Effective Date and continuing into perpetuity ("**Red Giant's Option Period**") to purchase the Easement for the sum of One Dollar (\$1.00), payable at the time of the closing of the transaction ("**Red Giant's Option**"). Red Giant's Option shall be exercised by written notice to Midwest at any time within Red Giant's Option Period but, notwithstanding the generality of the foregoing, only upon the occurrence of either one of the following events:

- a. Written acknowledgement by Midwest of its termination of use of the Connecting Track and the Southeast Track; or
- b. Termination of Midwest's Business, other than by sale or other transfer of the same to a successor or assign who continues to operate a business requiring the continual use of the Connecting Track or the Southeast Track.

5.2 Notice of exercise of Red Giant's Option shall be given or made in writing and delivered or mailed, first class, postage prepaid, to Midwest. In the event Red Giant's Option is exercised, Red Giant shall set a time and place for closing of the transaction, but in any event, such a closing shall take place on or before One Hundred Twenty (120) days after the exercise of Red Giant's Option. At closing, Midwest shall convey all of its right, title and interest in the Easement to Red Giant by way of quit claim deed.

5.3 Red Giant shall have the right to assign Red Giant's Option in whole or in part to its business successors and assigns but shall immediately notify Midwest in writing of any and all such assignments, which notification shall specify the complete and legally correct name and address of the assignee.

5.4 Contemporaneously with the execution and delivery of the deeds required by paragraphs 1 and 2 above to Red Giant, Midwest and Red Giant shall execute a "Memorandum of Option" in recordable form describing Red Giant's Option in substantially the same as the form of Memorandum of Option that is attached hereto as Exhibit C. Red Giant shall then be entitled to record the same.

6. Maintenance. Red Giant, at its expense, shall maintain the Connecting Track and the UP Track in a manner permitting operation at no less than FRA Class 1 standards, unless by mutual written agreement a different standard is provided. The term "maintenance" as used in this paragraph is intended to and shall include, in addition to repairs, all additions, betterments and changes to the Connecting Track and UP Track, and the removal of snow, ice, weeds and other obstructions therefrom. Red Giant shall bear and pay the costs and expense of all present and future changes in the Connecting Track and UP Track, rendered necessary by changes in other tracks, or in Red Giant's property, or in Red Giant's operating requirements. Red Giant shall also bear and pay the costs and expense of all construction to the Connecting Track and UP Track, made necessary by the construction, maintenance or operation of the Connecting Track, UP Track or IAIS Track, or any changes thereon. This paragraph shall apply to electrification, track elevation or depression, and grade separation, as well as any other repairs, additions, betterments or changes whatsoever. Red Giant shall employ all persons necessary to operate, maintain and repair the Connecting Track and the UP Track as needed. The Connecting Track and the UP Track shall be kept in a state of reasonable repair and reasonably suitable for the combined requirements of the parties hereto. Notwithstanding anything contained in this Agreement to the contrary, Red Giant's and/or Midwest's responsibility and liability to pay for or be responsible for the payment of repairs required to the Connecting Track and the UP Track shall be determined pursuant to the provisions of Sections 10.2 and 10.3 of this Agreement in circumstances when the same are applicable. Further, Red Giant's obligation under this Section 6 to maintain the Connecting Track shall cease as of the date of delivery to Midwest of the deed to the Connecting Track Real Estate pursuant to Section 4 of this Agreement, and its obligations under this Section 6 to maintain that portion of the UP Track located on the UP South Track Real Estate shall cease as of the date of delivery to Midwest of the deed to the UP South Track Real Estate; provided, however, Red Giant shall still be liable and responsible for any maintenance obligation specified by this Section 6 which relate to conditions or matters that exist as of the date of delivery of the relevant deed to Midwest.

7. Compliance with Laws; Designation of Responsibility.

7.1 Red Giant shall not treat, store (for a period of time in excess of the time any of Red Giant's railcars are authorized to be located on the Connecting Tract pursuant to the applicable terms of this Agreement) or dispose of petroleum products or hazardous waste or hazardous substances, as defined in (a) the Resource Conservation and Recovery Act, as amended, or (b) the Comprehensive Environmental Response Compensation and Liability Act, as amended, or (c) subsequent legislation regulating discharges into the environment, on the Connecting Track or the Southeast Track.

7.2 Responsibility for Environmental Claims (as hereafter defined) as between the parties shall be borne as follows:

- a. Red Giant shall be responsible for Environmental Claims to the extent they result from (i) the use of, or presence upon, the Connecting Track or the UP Track by Red Giant or its contractors or invitees (other than UP or IAIS) or (ii) the negligence or willful misconduct of Red Giant, its contractors or invitees (other than UP or IAIS), in operations on or over the Connecting Track or the UP Track, and;
- b. Midwest shall be responsible for Environmental Claims to the extent they result from (i) the use of, or presence upon, the Connecting Track or the Southeast Track, by Midwest or its contractors or invitees (other than UP or IAIS), or (ii) the negligence or willful misconduct of Midwest, its contractors or invitees (other than UP or IAIS) in operations on or over the Connecting Track or the Southeast Track.

7.3 Each party shall release the other party to the extent the first party is responsible for an Environmental Claim, and, to the extent of such responsibility, shall defend, indemnify, protect and save harmless such other party from and against such Environmental Claim and costs associated therewith, including, but not limited to, environmental consultant fees, attorney's fees and third party claims.

7.4 In the event any incident, accident, derailment, or vehicle striking or being struck by any equipment or other object (hereinafter "**Derailment**") involving equipment or railway cars owned, leased or operated by Red Giant or its contractors or invitees carrying (a) hazardous materials, substances or waste, as defined pursuant to Federal or State law or (b) pollutants (collectively, including the matters described in Section 7.4(a) hercof, the "**Hazardous Materials**") shall occur on the Connecting Track or the UP Track, Red Giant shall immediately advise Midwest of the occurrence of a Derailment, and, unless the Derailment was caused by the acts or inactions of UP, IAIS or Midwest, any report required by federal, state or local authority shall be the responsibility of Red Giant.

7.5 Red Giant shall undertake any Response Action (as hereafter defined) in accordance with all federal, state or local regulatory requirements necessitated by release of Hazardous Materials on the Connecting Track, UP Track and/or Midwest's property following the occurrence of a Derailment unless the Derailment is caused by the acts or inactions of UP,

IAIS or Midwest. If following a Derailment upon the Connecting Track or the UP Track (other than a Derailment caused by the acts or inactions of UP, IAIS or Midwest) Hazardous Materials must be transferred to undamaged cars or other vehicles, Red Giant shall perform the transfer.

7.6 In the event any cleanup, response, removal or remediation of any environmental condition on the Connecting Track or UP Track is necessary (collectively referred to as a "**Response Action**"), the Response Action (i) shall be undertaken and completed pursuant to a work plan (including a time schedule) submitted as soon as reasonable possible to Midwest for its review, and (ii) shall not unreasonably, in terms of duration or otherwise, restrict Midwest's use of the Connecting Track and the Southeast Track.

7.7 The term "**Environmental Claim**" means the direct costs of any cleanup, response, removal, remediation, natural resource damage, closure and/or post-closure required by any environmental conditions affecting the air, soil, surface waters, ground waters, streams, sediments and similar environmental conditions caused by, resulting from, arising out of, or occurring in connection with this Agreement.

7.8 The total cost of (a) clearing a Derailment on or other damage to the Connecting Track or UP Track that does not involve the release of any Hazardous Materials and/or (b) repairing the Connecting Track or UP Track or any other property damaged thereby shall be born by the parties hereto in accordance with Section 7.2 of this Agreement and the release and indemnity provisions of Section 7.3 of this Agreement shall likewise apply.

7.9 If any of Red Giant's trains, locomotives, cars, vehicles, or machinery which are capable of being operated on railroad tracks shall become derailed, wrecked, or otherwise disabled while upon the Connecting Track or UP Track, the same shall be re-railed or cleared by Red Giant at its sole cost and expense, unless the occurrence has occurred as a result of Midwest's, UP's or IAIS's negligence or willful misconduct, in which case Red Giant's and/or Midwest's responsibility and liability for the cost of the same shall be determined pursuant to the provisions of Sections 10.2 and 10.3 of this Agreement.

7.10 The liability and indemnity provisions of this Section 7 of this Agreement shall continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provisions, or the Connecting Track or UP Track is abandoned and vacated.

8. Insurance.

8.1 Midwest and Red Giant shall each separately obtain a policy of commercial general liability insurance containing broad form contractual liability with a single limit of at least \$5 MM per occurrence or claim and an aggregate limit of at least \$5 MM, and each must provide a certificate or certificates of insurance to the other certifying to the effectiveness of such insurance. The just specified \$5 MM limits may be satisfied by way of a base comprehensive general liability insurance policy combined with umbrella coverage aggregating in the appropriate amount. Coverage must be purchased on a post-1998 ISO or equivalent form, including, but not limited to, coverage for the following:

- a. Bodily injury including death and personal injury,
- b. Property damage,
- c. Fire legal liability, and
- d. Products and completed operations.

Each such policy shall also contain the following endorsement which shall be indicated on the certificate of insurance:

- x. The employee and workers' compensation related exclusions in the policies apply only to the party purchasing the policy.

The deductible for this policy shall be no more than \$15,000.00 and shall be subject to a retention by Red Giant of no more than \$100,000.00.

8.2 Red Giant shall also purchase a designated premises pollution coverage policy with a single limit of at least \$2 MM for each occurrence or claim and \$2 MM aggregate limit insofar as it pertains to the premises described within this Agreement as the Connecting Track Real Estate and the UP Track Real Estate. The deductible for this policy shall be no more than \$25,000.00 and shall not be subject to a retention. The policy shall cover both clean up costs and third party liability claims. Red Giant shall provide Midwest with a certificate of insurance certifying to the effectiveness of such insurance.

8.3 Any insurance policy shall be written by a reputable insurance company acceptable to the other party or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of Iowa.

8.4 If either party fails to procure and maintain insurance as required, the other party may elect to do so at the cost of the party failing to provide the insurance plus a 25% administration fee. The fact that insurance is obtained by either party hereto shall not be deemed to release or diminish the liability of either party hereto under the terms of this Agreement.

9. Use and Operation.

9.1 Red Giant shall operate the Connecting Track and UP Track subject to any applicable tariffs or rail transportation contracts and the terms of this Agreement, but Red Giant shall not be obligated to operate or maintain the Connecting Track and UP Track if it is prevented or hindered from doing so by Midwest's, UP's or IAIS's negligent or intentional acts or by acts of God, public authority, strikes, riots, labor disputes, or other causes beyond its control.

9.2 Except for those actions required in response to emergency situations, neither Red Giant nor Midwest shall permit or maintain any building, platform, fence, gate, vehicle or other structure, obstruction or material of any kind closer to the Connecting Track and Southeast Track than 9 feet horizontally from the center line of the Connecting Track and Southeast Track and 23 feet vertically above the top of the rail of the Connecting Track and

Southeast Track except as may be required in the ordinary operation of Midwest's Business for the loading and unloading of railcars.

9.3 Other than those that currently exist or which are required for the operation of Midwest's Business, Red Giant shall not construct, locate, maintain or permit the construction or erection of any pits, load out facilities, buildings, private crossings, beams, pipes, wires or other obstructions or installations of any kind or character over or under the Connecting Track and the Southeast Track without the prior written consent of Midwest which may be granted or withheld in Midwest's sole and absolute discretion.

9.4 In their use and operation of the Connecting Track and UP Track, Red Giant and Midwest shall comply with all applicable ordinances, regulations, statutes, rules, decisions and orders including, but not limited to, safety, zoning, air and water quality, noise, hazardous substances and hazardous waste (hereafter "**Standards**") issued by any federal, state or local governmental body or agency (hereafter "**Authority**").

9.5 If Red Giant uses the Connecting Track and/or UP Track for the purpose of shipping or receiving railcars containing Hazardous Materials, Red Giant shall, to the extent the same apply to the particular material or product from time to time being transported, comply with and abide by all Department of Transportation regulations as set out in 49 Code of Federal Regulations, Parts 100-199, inclusive, as amended from time to time, and provisions contained in applicable circulars of the Bureau of Explosives, Association of American Railroads, including any and all amendments and supplements thereto. The term "**Standards**" defined in paragraph 9.4 above shall include (but is not limited to) regulations referenced in this particular subparagraph.

9.6 Neither Midwest nor Red Giant shall permit, place, pile, store or stack any flammable material within 9 feet of the centerline of the Connecting Track or the UP Track except as required by Midwest during the loading and unloading of its railcars. Red Giant shall remove or otherwise control vegetation adjacent to the Connecting Track and UP Track so that it does not constitute a fire hazard.

9.7 Except when actually moving railcars across the same, Red Giant shall not allow any railcar or other equipment or objects to block the emergency access routes located (a) at the intersection of High Street and 18th Avenue, Council Bluffs, Iowa, or (b) at the two planked crossings as the same currently exist on the Connecting Track and which allow access to emergency vehicles south off of 18th Avenue onto Midwest's property.

9.8 When pushing or pulling railcars or other equipment on the UP Track across Tostevin Street, Red Giant shall require its operators or employees to sound a warning horn no longer than the time minimally required for the same by any applicable Authority; and when pushing or pulling railcars or other equipment on the Connecting Track or the UP Track, Red Giant shall require its operators to push or pull only that number of railcars or other equipment that can be pushed or pulled safely and without unnecessary noise caused by forces or torque arising from the attempt to push or pull too many railcars or pieces of equipment.

9.9 The Connecting Track and that portion of the Southeast Track located southeast of Tostevin Street (collectively the "Pass-through Track") shall be used strictly as a pass-through passageway between the IAIS Track and the UP Track. No Red Giant railcar or other piece of Red Giant equipment shall be located on the Pass-through Track for longer than 24 hours from the time it is first placed thereon. No Midwest railcar shall be located on the Pass-through Track for more than 72 hours from the time it is first placed thereon. The 24 and 72 hours time limitations specified above shall be extended as required to account for weekends and holidays. The 24 hour limitation specified above shall also be extended to account for the time Red Giant is prevented from moving railcars off of the Pass-through Track due to the loading and unloading of railcars by Midwest.

9.10 Red Giant may move Midwest's railcars to the Southeast Track to allow movement of Red Giant's cars so long as Midwest's railcars are returned to the Connecting Track at the earlier of (a) completion of movement of Red Giant's railcars, or (b) within 24 hours from initial movement. The 24 hour time limit specified above shall be extended as required to account for weekends and holidays and for the time Red Giant is prevented from moving railcars due to the loading and unloading of railcars by Midwest.

9.11 Red Giant must move any Red Giant railcars or other equipment blocking the needed travel of Midwest's railcars onto or over the Pass-through Track within 24 hours of verbal or written notice by Midwest to Red Giant. The 24 hour time limit specified above shall be extended as required to account for weekends and holidays and for the time Red Giant is prevented from moving railcars due to the loading and unloading of railcars by Midwest.

9.12 Neither Red Giant, nor any of its officers, agents, or employees, shall instruct, direct, or request IAIS (or IAIS' successors and assigns) to in any manner or for any period of time delay the placement or re-placement of Midwest's railcars onto the Connecting Track.

9.13 Neither Red Giant, nor any of its officers, agents or employees, shall move Midwest's railcars from the Connecting Track onto the IAIS track or direct or otherwise request IAIS (or its successors and assigns) to do the same.

9.14 In the event that Red Giant or its successors and assigns have not abandoned the Connecting Track and the UP South Track (as the term "abandonment" is defined at Sections 4.1 and 4.2 hereof) but have not used the Connecting Track and the UP Track for its business purposes for any consecutive six (6) month period, then, in that event, Red Giant's (or its successor's or assign's) obligation hereunder to move Midwest railway cars shall be temporarily suspended until such time as it again uses the Connecting Track or the UP Track for its business purposes.

9.15 In the event that Red Giant moves more than 200 of Midwest's railway cars in any one calendar year, then Midwest shall pay Red Giant the sum of \$25.00 per car moved in the relevant calendar year in excess of that number.

9.16 Midwest shall in good faith attempt to complete the loading or unloading of any of its railcars within four consecutive hours from the time the process is started. At any time

after 3-1/2 hours after the loading or unloading process is started but not yet then completed, Red Giant may give verbal or written notice to any corporate officer of Midwest who is then physically located on Midwest's business property of Red Giant's intent to move the railcar(s), and thirty (30) minutes thereafter Red Giant shall be entitled to move the railcar(s) as otherwise authorized by this Agreement.

10. Liability/Indemnification.

10.1 For purposes of this Agreement, the following definitions shall apply:

- a. References to Red Giant, Midwest, UP or IAIS shall include the officers, agents, and employees of each such corporation.
- b. "Third Person" shall mean and refer to any individual, corporation or entity other than Midwest or Red Giant, and shall specifically include UP and IAIS.
- c. "Loss" shall mean and refer to loss of or damage to the property (that occurs or relates to actions taken or occurrences that take place after the Effective Date) of any Third Person or Midwest or Red Giant and/or injury to or death of any Third Person, or any officers, agents or employees of Red Giant or Midwest. Loss shall also include, without limitation, the following associated expenses incurred by either Midwest or Red Giant as a result of or that is related to actions taken or occurrences that take place after the Effective Date:

Costs, expenses, the cost of defending litigation, attorneys' fees, expert witness' fees, court costs, the amounts paid in settlement, the amount of the judgment, and pre-judgment and post-judgment interest and expenses arising from analysis and clean up of any incident whether or not involving the release of Hazardous Materials or hazardous waste, damage to tracks, railcars and track-beds including degrading of the bed by water, oils or decaying logs.

10.2 Except as otherwise specifically provided in this Agreement, all Loss related to the construction, operation, maintenance, use, presence or removal of the Connecting Track and the UP Track shall be allocated as follows:

- a. Midwest shall indemnify and hold harmless Red Giant from and against Loss arising from or growing out of the negligent acts or omissions of Midwest or arising from Midwest's failure to timely perform or comply with all of its obligations specified in paragraphs 7, 8 and 9 of this Agreement.
- b. Red Giant shall indemnify and hold harmless Midwest from and against Loss arising from or growing out of the negligent acts or omissions of Red Giant or arising from Red Giant's failure to timely perform or comply

with all of its obligations specified in paragraphs 6, 7, 8 and 9 of this Agreement.

10.3 The preceding provisions of this paragraph apply regardless of whether either party had notice of, consented to or permitted the referenced failures or noncompliance and whether or not either of the parties hereto or a Third Person contributes to cause the Loss, provided, however, that nothing in this Agreement shall be construed as impairing the right of either party to seek contribution or indemnification from a Third Person.

11. Remedies.

11.1 Red Giant and Midwest acknowledge that the subject matter of this Agreement is unique and that it would be difficult if not impossible to measure the damages which would result to one party from the other party's breach of the agreements and covenants set forth herein. Accordingly, in addition to any other remedies which the parties may have at law or in equity or as may be otherwise herein provided, the parties hereto agree that they each shall have the right to have any or all of the provisions of this Agreement specifically performed by the other and that they have the right to obtain injunctive relief.

11.2 Red Giant acknowledges that Midwest's damages for Red Giant's delay in its performance of the obligations placed upon it by Sections 9.7 through and including 9.11 of this Agreement (collectively "**Affirmative Covenants**") are difficult to accurately calculate and are not reasonably determinable at the time of the execution of this Agreement and that, therefore, Red Giant agrees to pay liquidated damages to Midwest ("**Liquidated Damages**") as set forth in this paragraph. Red Giant acknowledges and agrees that the Liquidated Damages are intended to compensate Midwest for the delayed or late performance by Red Giant of the Affirmative Covenants and are not a penalty. Midwest and Red Giant have computed, estimated and agreed upon the sum of the Liquidated Damages as hereinafter set forth as an attempt to make a reasonable forecast of Midwest's probable actual loss because of the difficulty of estimating the exactness of the damages that will result. Red Giant shall not be required to pay Liquidated Damages if it is prevented or hindered from timely complying with the Affirmative Covenants by Midwest's negligent or intentional acts or by acts of God, public authority, strikes, riots, labor disputes, or other causes beyond its control. Upon Midwest's determination that Red Giant has failed to comply with one or more of the Affirmative Covenants, Midwest shall provide written notice to Red Giant specifying the failure and the action required to satisfy the relevant Affirmative Covenant ("**Default Notice**"). In the event that Red Giant fails to fully remedy the defaults specified in the Default Notice within twenty-four (24) hours of its receipt of the same, then, except as hereafter stated, for every twenty-four (24) hour period thereafter of delay in the curing of the default specified within the Default Notice, Red Giant shall pay to Midwest the sum of Five Hundred Dollars (\$500.00) per single Midwest railway car or a total of Seven Hundred Dollars (\$750.00) per group of Midwest railway cars in excess of one that are involved in the particular occurrence or Two Hundred Fifty Dollars (\$250.00) per occurrence involving Red Giant railway cars but not any Midwest railway cars as the Liquidated Damages and Midwest shall not be entitled to recover any other damages arising out of the matters specified in the Default Notice. For purposes of this Agreement, and as an itemization of possible examples without the intent of excluding other possible situations, Midwest's railcars shall be deemed to be involved in the relevant occurrence if Midwest is prevented from

accessing, loading or moving its railcars as contemplated by any of the applicable Affirmative Covenants. Notwithstanding the generality of the foregoing, Midwest may, at its option, deliver the Default Notice to Red Giant and pursue Liquidated Damages or it may pursue any or all of its other rights and remedies against Red Giant, whether arising by law, equity, contract or otherwise.

11.3 If at any time a question or controversy shall arise between Midwest and Red Giant regarding Midwest's demand for Liquidated Damages from Red Giant, then, upon the written request of either party setting forth the issue in dispute, such question or controversy shall be submitted to arbitration. If the parties are able to agree upon a single arbitrator experienced in matters of the character in dispute within thirty (30) days after the party desiring such arbitration (the "**Demanding Party**") shall notify in writing the other party to such dispute (the "**Noticed Party**"), such dispute shall be submitted to such single arbitrator. Otherwise, the Demanding Party shall appoint an arbitrator and notify the Noticed Party in writing of such appointment. Within twenty (20) days after receipt of such notice, the Noticed Party shall appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should any Noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the Demanding Party shall be the arbitrator, otherwise, the arbitrator selected by the Demanding Party and the arbitrator selected by the Noticed Party shall select one additional arbitrator to complete the board of arbitrators. If the arbitrators chosen by the Demanding Party and the Noticed Party fail to agree upon an additional arbitrator, the same shall, upon application of either party, be appointed by the chief judge (or acting chief judge) of the Iowa District Court for Pottawattamie County, Iowa upon application by either party after ten (10) days written notice to the other party. Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in the notice of demand for arbitration, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or, if applicable, the judge, shall appoint another to act in his place. After considering all evidence, testimony, and arguments, the single arbitrator or the majority of the board of arbitrators shall promptly state such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. After delivery of the final decision or award, each party shall forthwith comply with the decision or award immediately after receiving it. Each party to the arbitration shall pay the compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. Compensation, costs, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration. The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

12. Notices. Any notice required or permitted in this Agreement shall (unless otherwise specified in this Agreement) be in writing and shall be deemed to have been given when personally delivered to any officer of either party hereto or placed in the United States mail, certified mail, return receipt requested, and addressed as follows:

If to Red Giant: Red Giant Oil Company
Attn: Sherryl Bills, President
1701 South 3rd Street
Council Bluffs, Iowa 51503

With copy to: William Hughes, Esq.
Stuart Tinley Law Firm, LLP
Quest Building
310 W. Kanessville Blvd., 2nd Floor
P.O. Box 398
Council Bluffs, IA 51502-0398

If to Midwest: Midwest Walnut Company of Iowa
Attn: Gary W. Keller, Chief Operating Officer
1914 Tostevin St.
Council Bluffs, IA 51501

With copy to: Steve Woolley, Esq.
McGill, Gotsdiner, Workman & Lepp, P.C., L.L. O.
11404 W. Dodge Road, Suite 500
Omaha, NE 68154-2584

Any party may unilaterally designate a different address by giving notice of each change in the manner specified above to the other party.

13. Termination. This Agreement shall terminate upon the earlier of the written consent of both parties hereto or the execution and delivery of both of the Deeds contemplated by Section 4 hereof or the deed contemplated by Section 5 hereof. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

14. Controlling Agreement. Notwithstanding any contractual entitlements or other terms specified by the Settlement Agreement or in the STB Application, Red Giant and Midwest acknowledge and confirm that their relative rights and obligations as established by the Operating Agreement are unchanged and are controlled by and enforceable as specified by this Operating Agreement.

15. Miscellaneous. This Agreement shall be binding upon the undersigned and their successors and assigns, and shall inure solely to the benefit of and shall be enforceable by the parties hereto and their successors and assigns. UP, IAIS or any other Third Party shall not be entitled to rely on or to enforce this Agreement. This Agreement shall be governed by the laws of the State of Iowa, and if there is a lawsuit, the parties agree to submit the same to the sole and exclusive jurisdiction of the Iowa District Court for Pottawattamie County, Iowa. Should a lawsuit be necessary, the successful party shall be entitled to recover its reasonable attorney fees from the other party. This Agreement constitutes the entire understanding and agreement of the

parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment. The person signing this Agreement on behalf of Red Giant represents and warrants that she has authority to execute this Agreement and to obligate Red Giant to comply with its terms. The person signing this Agreement on behalf of Midwest represents and warrants that he has authority to execute this Agreement and to obligate Midwest to comply with its terms. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by the party to be charged. No delay or omission on the part of either party in exercising any right hereunder shall operate as a waiver of such right or any other right in the future. This Agreement may be executed in counterparts and as executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. This Agreement or any section thereof shall not be construed against any party due to the fact that said party thereof drafted the Agreement or any section thereof. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the applications of such provision to such persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date(s) set forth below to be effective as of the Effective Date first specified herein.

RED GIANT OIL COMPANY,
a Nebraska corporation

Date: October 16, 2009

By:

Sherryl A. Bills
Sherryl Bills, President

MIDWEST WALNUT COMPANY OF IOWA,
an Iowa corporation

Date: October 16, 2009

By:

Gary W. Keller
Gary W. Keller, Chief Operating Officer

Return To: Steven J. Woolley, Esq., McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O., 11404 West Dodge Road,
Suite 500, Omaha, Nebraska 68154-2584
Preparer: Steven J. Woolley, Esq., McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O., 11404 West Dodge Road,
Suite 500, Omaha, Nebraska 68154-2584
Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South 3rd
Street, Council Bluffs, Iowa 51503

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("**Agreement**") is entered into on the effective date of _____, 2009 ("**Effective Date**") by and between RED GIANT OIL COMPANY, a Nebraska corporation authorized to do business in Iowa ("**Grantor**") and MIDWEST WALNUT COMPANY OF IOWA, an Iowa corporation ("**Grantee**").

RECITALS:

This Agreement is made with reference to the following facts and objectives:

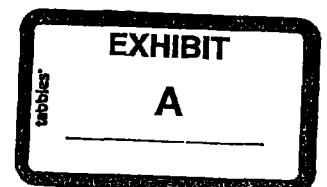
A. Grantor is the owner of fee simple title to and/or has the right to possess and use the real estate identified as the "**Connecting Track Real Estate**" and the "**UP South Track Real Estate**", as those terms are defined in the hereafter identified "**Operating Agreement**" (and are hereafter collectively referred to as the "**Easement Property**") and which is legally described as follows:

See Exhibit "A" attached hereto and made a part hereof by this reference.

B. Grantee is the record title owner of real estate which is contiguous to all or some portion of the Easement Property (collectively the "**Grantee Parcel**").

C. On or about the Effective Date, Grantor and Grantee entered into a written operating agreement ("**Operating Agreement**"), which, among other terms, required Grantor to execute and deliver this Agreement to Grantee.

D. Pursuant to their obligations under the Operating Agreement, the parties hereto desire to enter into this Agreement for the hereafter stated purposes.



AGREEMENT:

NOW, THEREFORE, in order to consummate the intent of the parties as set forth in the foregoing Recitals, which Recitals are made a contractual part of this Agreement, and in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

1. Grant of Easement; Purpose of Easement; Burden and Benefit. Grantor hereby grants to Grantee, for the benefit of the Grantee Parcel, a permanent, perpetual and non-exclusive easement in, to, over, along, upon and across the Easement Property for the operation, placement, movement and utilization of rail cars for all purposes required by Grantee's current and future business purposes, including but not limited to the right and privilege to occupy and use the Easement Property for any and all railroad purposes incidental or related thereto, together with the right of ingress and egress to and from the Easement Property for the purpose of exercising the rights herein granted, all as a burden upon all other real estate now or hereafter owned by Grantor and/or upon which Grantor has the right to possess and use and which is appurtenant to and/or contiguous with the Easement Property (collectively the "Grantor Parcel") and as an appurtenant benefit to the Grantee Parcel.

2. Construction and Maintenance. Grantor and Grantee shall each bear the expense of construction and maintenance of the railroad track and other property located on the Easement Property as required and specified by the Operating Agreement.

3. Mortgages and Liens Subordinate. Any mortgage or other lien now or hereafter placed upon the Easement Property, or any portion thereof, shall, at all times, be subject and subordinate to the terms of this Agreement and any party foreclosing any such mortgage shall acquire title to the foreclosed premises subject to the terms of this Agreement.

4. Terms; Non-exclusive. The easement herein created and established shall be perpetual and non-exclusive. Nothing herein shall be construed to limit the Grantor's access to or use of the Easement Property provided such access or use is in full and complete compliance with all of the terms and requirements for the same specified in the Operating Agreement.

5. Covenants Running with the Land. The easements, restrictions, benefits and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, personal representatives and assigns.

6. Non-Merger. Ownership by one person or entity of both the Grantor Parcel and the Grantee Parcel shall not result in a cancellation or termination of the easement hereby created through merger or otherwise, unless specifically terminated in writing by an instrument duly executed, acknowledged and recorded in the office of the Recorder of Pottawattamie County, Iowa.

7. Warranties. Grantor, for itself, its successors and assigns, does hereby covenant, grant and bargain with the Grantee, its successors and assigns, that it is the sole owner of fee simple title in and to the Easement Property and/or has full power and lawful authority to occupy and use the Easement Property and to grant, bargain, sell and convey the easement granted across the Easement Property by this Agreement, and that the Easement Property is free and clear from all liens, delinquent taxes, assessments and encumbrances other than those that may have been created by Grantee. Grantor will and hereby does warrant and will forever defend the rights granted to Grantee pursuant to this Agreement and the quiet and peaceable possession of the Easement Property unto the Grantee, its successors and assigns, against the lawful claims of all persons whomsoever.

8. Miscellaneous. If any provision or portion of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid, inoperative or unenforceable, the remainder of this Agreement or the application of such provision, or portion thereof, to any other persons or circumstances shall not be affected thereby; the remainder of this Agreement shall be given effect as if such invalid or inoperative portion had not have been included; and it shall not be deemed that any such invalid provision effects the consideration for this Agreement; and the provisions of this Agreement shall be valid and enforceable to the full extent permitted by law. This Agreement shall be construed and governed in accordance with the laws of the State of Iowa. The paragraph headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement, or any part thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) hereafter stated to be effective as of the date first stated above.

Dated: _____, 2009

RED GIANT OIL COMPANY,
a Nebraska corporation authorized to do
business in Iowa, Grantor

By: _____
Sherryll Bills, President

Dated: _____, 2009

MIDWEST WALNUT COMPANY OF IOWA,
an Iowa corporation, Grantee

By: _____
Gerald W. Keller, Chief Operating Officer

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

This instrument was acknowledged before me on _____, 2009, by Gerald W. Keller as Chief Operating Officer of Midwest Walnut Company of Iowa, an Iowa corporation.

Notary Public

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

This instrument was acknowledged before me on _____, 2009, by Sherryl Bills, President of Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa.

Notary Public

EXHIBIT "A"

PARCEL 1:

A parcel of land located in part of Lots 6 and 7; Block 5 of the Casady's Addition to the City of Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the southwest corner of said Lot 7; thence North 0°32'10" West, along the East right of way line of vacated High Street and along the west line of said Lot 7, a distance of 30.79 feet to the Point of Beginning; thence continuing North 0°32'10" West, along said east right of way line and along the west line of said Lot 7, a distance of 40.02 feet to a point on the southwesterly right of way line of the Chicago and North Western Railway Company, predecessor to Union Pacific Railroad Company; thence South 40°52'00" East, along said southwesterly right of way line, a distance of 178.88 feet; thence North 50°46'11" West a distance of 150.62 feet to the Point of Beginning.

Containing 0.053 acres more or less

PARCEL 2:

Also A parcel of land located in part of Lots 1, 12, 13, 14, 15 and 16, all in Block 6 of Casady's Addition, Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the northeast corner of said Lot 1 and Point of Beginning; thence South 0°32'10" East, along the west right of way line of vacated High Street and along the east line of said Lot 1, a distance of 65.81 feet to a point on a non-tangent curve concave southwesterly and having a radius of 457.46 feet and a central angle of 29°36'34", a radial line through said point bears North 29°02'21" East; thence northwesterly, along said curve, an arc length of 236.41 feet and having a chord bearing and distance of North 75°45'56" West, 233.78 feet to the end of said curve; thence South 89°25'47" West a distance of 164.94 feet to the Beginning of a tangent circular curve concave northeasterly and having a radius of 497.46 feet and a central angle of 9°11'13"; thence northwesterly, along said curve, an arc length of 79.76 feet and having a chord bearing and distance of North 85°58'37" West, 79.68 feet to a point on the east right of way line of vacated 3rd Street and also, being the west line of said Lot 12; thence north 0°36'02" West, along said east right of way line and along the west line of said Lot 12, a distance of 0.89 feet to the northwest corner of said Lot 12; thence North 89°34'34" East, along the south right of way line of 18th Avenue and along the north line of said Block 6, a distance of 470.43 feet to the Point of Beginning.

Containing 0.169 acres more or less

NOTE: Parcels 1 and 2 as described above are one and the same parcels of land as described on the Exhibit A attached to the Easement Deed dated December 10, 1999, by and between Midwest Walnut Company, grantor, and Union Pacific Railroad Company, grantee, recorded on September 20, 2000, in the office of the Recorder of Pottawattamie County, Iowa at Book 101, Page 13179 ("Easement Deed"), and as Parcels "A" and "B" as described on the Plat of Survey

attached to the Easement Deed which is dated October 21, 1999, and was prepared by Carl H. Rogers, Jr.

PARCEL 3:

A tract of land lying in a part of 18th Avenue right of way in Casady's Addition to the City of Council Bluffs, Iowa more particularly described as follows:

Commencing at the Southeast corner of Lot 4, Block 2 of said Casady's Addition and point of beginning of said permanent easement; thence South 81°24'54" East a distance of 147.33 feet; thence North 89°25'47" East a distance of 164.94 feet to the beginning of a tangent circular curve concave southwesterly and having a radius of 507.46 feet and a central angle of 24°00'04"; thence southeasterly, along said curve, an arc length of 212.57 feet and having a chord bearing and distance of South 78°34'11" East, 211.02 feet to a point on the South right of way line of said 18th Avenue and also, being the North line of Block 6 of said Casady's Addition; thence South 89°34'34" West, along said South right of way line and along the North line of said Block 6, a distance of 450.78 feet to the Northwest corner of Lot 12 of said Block 6; thence South 0°36'02" East, along the West line of said Lot 12, a distance of 0.89 feet to a point on a non-tangent curve concave northeasterly and having a radius of 497.46 feet and a central angle of 5°52'58", a radial line through said point bears South 8°37'00" West; thence northwesterly, along said curve, an arc length of 51.08 feet and having a chord bearing and distance of North 78°26'31" West, 51.05 feet to the end of said curve; thence North 45°34'19" West a distance of 79.74 feet to a point on the North right of way line of said 18th Avenue and also, being the South line of said Lot 4; thence North 89°29'39" East, along said North right of way line and along the South line of said Lot 4, a distance of 40.26 feet to the point of beginning of said permanent easement. Said permanent easement contains 21,401 square feet, more or less, or 0.491 of an acre, more or less.

NOTE: The South line of said Lot 4 is assumed to bear North 89°29'39" East for this description.

FURTHER NOTE: Parcel 3 as described above is one and the same parcel of land as described on the Exhibit "A" attached to the Easement for Railroad Right of Way dated March 23, 2000, by and between City of Council Bluffs, Iowa, grantor, and Union Pacific Railroad Company, grantee, recorded on April 4, 2000, in the office of the Recorder of Pottawattamie County, Iowa as Instrument No. 16452, Book 100, Page 45956.

PARCEL 4:

EXCEPT FOR THE PORTION THEREOF WHICH LIES NORTH OF THE SOUTHERN EDGE OF EIGHTEENTH AVENUE, COUNCIL BLUFFS, IOWA AS LOCATED AS OF THE DATE OF THIS DEED, A PARCEL OF LAND LOCATED IN PART OF BLOCKS 1, 3, 5 AND 10, AND A PART OF ALLEYS AND PART OF VACATED ALLEYS IN SAID BLOCKS IN CASADY'S ADDITION, AND PARTS OF 18TH AVENUE, SOUTH AVENUE AND RELOCATED 3RD STREET CONNECTION AND ALSO, PARTS OF VACATED 17TH AVENUE, VACATED 19TH AVENUE AND VACATED HIGH STREET, AND PART OF LOT 53 AND PART OF LOT 58 IN LINDA LOMA ADDITION, COUNCIL BLUFFS, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 6 IN SAID CASADY'S ADDITION AND POINT OF BEGINNING; THENCE NORTH 38°11'17" WEST A DISTANCE OF 83.49 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 3, SAID POINT BEING 10.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY OF TWO PARALLEL RAILROAD TRACKS (THE MOST NORTHEASTERLY OF WHICH IS THE MAIN RAILROAD TRACK); THENCE NORTH 40°47'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 507.48 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 13°13'08" AND A RADIUS OF 710.00 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK AND ALONG SAID CURVE, AN ARC LENGTH OF 163.81 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 34°10'26" WEST, 163.44 FEET TO THE END OF SAID CURVE; THENCE NORTH 27°33'50" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 3.70 FEET TO A POINT ON THE WEST LINE OF LOT 11 OF SAID BLOCK 1; THENCE NORTH 0°36'02" WEST, ALONG THE WEST LINE OF LOTS 11 AND 12 OF SAID BLOCK 1, A DISTANCE OF 84.41 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 18°24'10" AND A RADIUS OF 595.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC LENGTH OF 191.11 FEET AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 33°32'05" EAST, 190.29 FEET TO THE END OF SAID CURVE; THENCE SOUTH 42°44'10" EAST A DISTANCE OF 136.46 FEET TO A POINT ON THE SOUTH LINE OF LOT 7 OF SAID BLOCK 1; THENCE SOUTH 40°35'09" EAST A DISTANCE OF 86.36 FEET TO A POINT ON THE NORTH LINE OF LOT 15 OF SAID BLOCK 3; THENCE SOUTH 40°40'21" EAST A DISTANCE OF 140.58 FEET TO A POINT ON THE WEST LINE OF A NORTH-SOUTH ALLEY; THENCE SOUTH 40°38'59" EAST A DISTANCE OF 53.31 FEET TO A POINT ON THE NORTH LINE OF LOT 3 OF SAID BLOCK 3; THENCE SOUTH 40°41'43" EAST A DISTANCE OF 89.12 FEET TO A POINT ON THE NORTH LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH 40°37'27" EAST A DISTANCE OF 58.00 FEET TO A POINT ON THE EAST LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH 40°30'49" EAST A DISTANCE OF 117.25 FEET TO A POINT ON THE NORTH LINE OF LOT 8 OF SAID BLOCK 5; THENCE SOUTH 40°38'57" EAST A DISTANCE OF 180.35 FEET TO A POINT ON THE EAST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH 40°38'28" EAST A DISTANCE OF 31.82 FEET TO A POINT ON THE SOUTH LINE OF AN EAST-WEST ALLEY; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 159.69 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 123.81 FEET TO A POINT ON THE WEST LINE OF LOT 53 OF SAID LINDA LOMA ADDITION; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 252.08 FEET; THENCE SOUTH 39°18'08" WEST A DISTANCE OF 25.09 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 9°57'46" AND A RADIUS OF 659.00 FEET, SAID POINT BEING 9.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MAIN RAILROAD TRACK; THENCE NORTHWESTERLY AND PARALLEL WITH SAID MAIN RAILROAD

TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 114.59 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 45°42'59" WEST, 114.44 FEET TO THE END OF SAID CURVE; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 100.75 FEET TO A POINT ON THE WEST LINE OF LOT 58 OF SAID LINDA LOMA ADDITION; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 102.25 FEET TO A POINT ON THE EAST LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 2.30 FEET TO A POINT 9.00 FEET SOUTHWESTERLY MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH 42°49'38" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 4.62 FEET TO A POINT ON THE NORTH LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH 42°49'38" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 14.20 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE SOUTHWESTERLY AND HAVING A CENTRAL ANGLE OF 4°45'26" AND A RADIUS OF 481.48 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 39.98 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 45°12'17" WEST, 39.97 FEET TO THE END OF SAID CURVE; THENCE NORTH 47°35'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 39.92 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH 89°34'34" WEST, ALONG THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5, A DISTANCE OF 9.57 FEET; THENCE NORTH 40°52'00" WEST A DISTANCE OF 100.74 FEET TO A POINT 9.50 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH 40°52'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 178.88 FEET TO A POINT ON THE WEST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH 0°32'10" EAST, ALONG THE WEST LINE OF LOT 7 OF SAID BLOCK 5, A DISTANCE OF 40.02 FEET; THENCE NORTH 55°56'12" WEST A DISTANCE OF 80.18 FEET TO A POINT OF THE EAST LINE OF LOT 1 OF SAID BLOCK 6; THENCE NORTH 0°32'10" WEST, ALONG THE EAST LINE OF LOT 1 OF SAID BLOCK 6, A DISTANCE OF 65.81 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 1.815 ACRES, MORE OR LESS. SAID PARCEL IS SUBJECT TO AN EASEMENT FOR STREET RIGHT OF WAY FOR RELOCATED 3RD STREET CONNECTION TO HARRY LANGDON BOULEVARD. SAID EASEMENT IS RECORDED IN BOOK 101, PAGE 24609 IN THE OFFICE OF THE POTTAWATTAMIE COUNTY RECORDER. SAID PARCEL IS ALSO SUBJECT TO ANY AND ALL OTHER EXISTING EASEMENTS, RESERVATIONS AND/OR RIGHTS-OF-WAY WHATSOEVER.

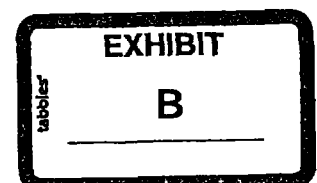
NOTE: THE EAST LINE OF LOT 1 OF SAID BLOCK 6 IS ASSUMED TO BEAR NORTH 0°32'10" WEST FOR THIS DESCRIPTION.

Return To: Steven J. Woolley, Esq., McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O., 11404 West Dodge Road, Suite 500, Omaha, Nebraska 68154-2584
Preparer: Steven J. Woolley, Esq., McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O., 11404 West Dodge Road, Suite 500, Omaha, Nebraska 68154-2584
Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South 3rd Street, Council Bluffs, Iowa 51503

MEMORANDUM OF OPTION AND LIEN PROHIBITION

NOTICE IS HEREBY GIVEN that the real estate described in Exhibit "A" attached hereto and incorporated herein by this reference ("Real Estate") is the subject of an option and lien prohibition by and between RED GIANT OIL COMPANY, a Nebraska corporation authorized to do business in Iowa ("Red Giant") and MIDWEST WALNUT COMPANY OF IOWA, an Iowa corporation ("Midwest Walnut") as set forth in a written operating agreement entered into on the effective date of _____, 2009, by and between Red Giant and Midwest Walnut ("Operating Agreement"). Set forth herein are summaries of certain provisions of the Operating Agreement.

1. Term. The Operating Agreement provides for a term for the option commencing with the effective date of the Operating Agreement and continuing into perpetuity.
2. Option. The Operating Agreement provides that Midwest Walnut has the option to purchase all or some portion of the Real Estate throughout the term of the option upon the occurrence of one or more events as specified by the Operating Agreement.
3. Lien Prohibition. The Operating Agreement provides that neither Red Giant nor any of its successors or assigns shall mortgage or otherwise encumber the title to the Real Estate, nor shall it or any of its successors or assigns allow any lien to be placed thereon other than Permitted Liens (as that term is hereafter defined). The Operating Agreement further provides that no such mortgage or other encumbrance or lien shall be a valid enforceable lien on any part of the Real Estate without Midwest Walnut's prior, written and recorded consent to the same, which consent may be withheld or granted by Midwest Walnut in its sole and absolute discretion. For purposes of this Memorandum, the term "Permitted Liens" shall mean and include only the following:



- a. Liens for current taxes not delinquent or for taxes being contested in good faith and by appropriate proceedings, and with respect to which adequate reserves have been established, and are being maintained, in accordance with generally accepted accounting principles ("GAAP"),
- b. Liens arising in the ordinary course of business for sums being contested in good faith and by appropriate proceedings, and with respect to which adequate reserves have been established, and are being maintained, in accordance with GAAP, and
- c. Mechanic's, worker's, materialmen's, warehousemen's, landlord's and other like liens arising in the ordinary course of business in respect of obligations which are not delinquent or which are being contested in good faith and by appropriate proceedings, and with respect to which adequate reserves have been established, and are being maintained, in accordance with GAAP.

4. Other Prohibition. The Operating Agreement prohibits Red Giant and its successors and assigns from selling, leasing, assigning or otherwise transferring any right, title or interest in and to that Easement Deed dated December, 1999, recorded September 20, 2000, at Book 101, Page 1313 in the office of the Recorder of Pottawattamie County, Iowa, except as otherwise specifically allowed by the Operating Agreement.

5. Notices. All notices which may be given under the Operating Agreement are considered as properly given, if delivered in writing, and personally delivered or placed in the United States mail, certified mail, return receipt requested, and addressed as follows:

If to Red Giant: Red Giant Oil Company
 Attn: Sherryl Bills, President
 1701 South 3rd Street
 Council Bluffs, Iowa 51503

With copy to: William Hughes, Esq.
 Stuart Tinley Law Firm, LLP
 Qwest Building
 310 W. Kanesville Blvd., 2nd Floor
 Council Bluffs, IA 51502-0398

If to Midwest Walnut: Midwest Walnut Company of Iowa
 Attn: Gary W. Keller, Chief Operating Officer
 1914 Tostevin St.
 Council Bluffs, IA 51501

With copy to: Steve Woolley, Esq.
 McGill, Gotsdiner, Workman & Lepp, P.C., L.L. O.
 11404 W. Dodge Road, Suite 500
 Omaha, NE 68154-2584

Dated: _____, 2009

RED GIANT OIL COMPANY,
a Nebraska corporation authorized to do
business in Iowa

By: _____
Sherryl Bills, President

Dated: _____, 2009

MIDWEST WALNUT COMPANY OF IOWA,
an Iowa corporation

By: Gerald W. Keller, Chief Operating Officer

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

This instrument was acknowledged before me on _____, 2009, by Gerald W. Keller as Chief Operating Officer of Midwest Walnut Company of Iowa, an Iowa corporation.

Notary Public

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

This instrument was acknowledged before me on _____, 2009, by Sherryl Bills, President of Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa.

Notary Public

EXHIBIT "A"

PARCEL 1:

A parcel of land located in part of Lots 6 and 7; Block 5 of the Casady's Addition to the City of Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the southwest corner of said Lot 7; thence North 0°32'10" West, along the East right of way line of vacated High Street and along the west line of said Lot 7, a distance of 30.79 feet to the Point of Beginning; thence continuing North 0°32'10" West, along said east right of way line and along the west line of said Lot 7, a distance of 40.02 feet to a point on the southwesterly right of way line of the Chicago and North Western Railway Company, predecessor to Union Pacific Railroad Company; thence South 40°52'00" East, along said southwesterly right of way line, a distance of 178.88 feet; thence North 50°46'11" West a distance of 150.62 feet to the Point of Beginning.

Containing 0.053 acres more or less

PARCEL 2:

Also A parcel of land located in part of Lots 1, 12, 13, 14, 15 and 16, all in Block 6 of Casady's Addition, Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the northeast corner of said Lot 1 and Point of Beginning; thence South 0°32'10" East, along the west right of way line of vacated High Street and along the east line of said Lot 1, a distance of 65.81 feet to a point on a non-tangent curve concave southwesterly and having a radius of 457.46 feet and a central angle of 29°36'34", a radial line through said point bears North 29°02'21" East; thence northwesterly, along said curve, an arc length of 236.41 feet and having a chord bearing and distance of North 75°45'56" West, 233.78 feet to the end of said curve; thence South 89°25'47" West a distance of 164.94 feet to the Beginning of a tangent circular curve concave northeasterly and having a radius of 497.46 feet and a central angle of 9°11'13"; thence northwesterly, along said curve, an arc length of 79.76 feet and having a chord bearing and distance of North 85°58'37" West, 79.68 feet to a point on the east right of way line of vacated 3rd Street and also, being the west line of said Lot 12; thence north 0°36'02" West, along said east right of way line and along the west line of said Lot 12, a distance of 0.89 feet to the northwest corner of said Lot 12; thence North 89°34'34" East, along the south right of way line of 18th Avenue and along the north line of said Block 6, a distance of 470.43 feet to the Point of Beginning.

Containing 0.169 acres more or less

NOTE: Parcels 1 and 2 as described above are one and the same parcels of land as described on the Exhibit A attached to the Easement Deed dated December 10, 1999, by and between Midwest Walnut Company, grantor, and Union Pacific Railroad Company, grantee, recorded on September 20, 2000, in the office of the Recorder of Pottawattamie County, Iowa at Book 101,

Page 13179 ("Easement Deed"), and as Parcels "A" and "B" as described on the Plat of Survey attached to the Easement Deed which is dated October 21, 1999, and was prepared by Carl H. Rogers, Jr.

PARCEL 3:

A tract of land lying in a part of 18th Avenue right of way in Casady's Addition to the City of Council Bluffs, Iowa more particularly described as follows:

Commencing at the Southeast corner of Lot 4, Block 2 of said Casady's Addition and point of beginning of said permanent easement; thence South 81°24'54" East a distance of 147.33 feet; thence North 89°25'47" East a distance of 164.94 feet to the beginning of a tangent circular curve concave southwesterly and having a radius of 507.46 feet and a central angle of 24°00'04"; thence southeasterly, along said curve, an arc length of 212.57 feet and having a chord bearing and distance of South 78°34'11" East, 211.02 feet to a point on the South right of way line of said 18th Avenue and also, being the North line of Block 6 of said Casady's Addition; thence South 89°34'34" West, along said South right of way line and along the North line of said Block 6, a distance of 450.78 feet to the Northwest corner of Lot 12 of said Block 6; thence South 0°36'02" East, along the West line of said Lot 12, a distance of 0.89 feet to a point on a non-tangent curve concave northeasterly and having a radius of 497.46 feet and a central angle of 5°52'58", a radial line through said point bears South 8°37'00" West; thence northwesterly, along said curve, an arc length of 51.08 feet and having a chord bearing and distance of North 78°26'31" West, 51.05 feet to the end of said curve; thence North 45°34'19" West a distance of 79.74 feet to a point on the North right of way line of said 18th Avenue and also, being the South line of said Lot 4; thence North 89°29'39" East, along said North right of way line and along the South line of said Lot 4, a distance of 40.26 feet to the point of beginning of said permanent easement. Said permanent easement contains 21,401 square feet, more or less, or 0.491 of an acre, more or less.

NOTE: The South line of said Lot 4 is assumed to bear North 89°29'39" East for this description.

FURTHER NOTE: Parcel 3 as described above is one and the same parcel of land as described on the Exhibit "A" attached to the Easement for Railroad Right of Way dated March 23, 2000, by and between City of Council Bluffs, Iowa, grantor, and Union Pacific Railroad Company, grantee, recorded on April 4, 2000, in the office of the Recorder of Pottawattamie County, Iowa as Instrument No. 16452, Book 100, Page 45956.

PARCEL 4:

EXCEPT FOR THE PORTION THEREOF WHICH LIES NORTH OF THE SOUTHERN EDGE OF EIGHTEENTH AVENUE, COUNCIL BLUFFS, IOWA AS LOCATED AS OF THE DATE OF THIS DEED, A PARCEL OF LAND LOCATED IN PART OF BLOCKS 1, 3, 5 AND 10, AND A PART OF ALLEYS AND PART OF VACATED ALLEYS IN SAID BLOCKS IN CASADY'S ADDITION, AND PARTS OF 18TH AVENUE, SOUTH AVENUE AND RELOCATED 3RD STREET CONNECTION AND ALSO, PARTS OF VACATED 17TH AVENUE, VACATED 19TH AVENUE AND VACATED HIGH STREET, AND PART OF LOT 53 AND PART OF LOT 58 IN LINDA LOMA ADDITION, COUNCIL BLUFFS,

IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT I, BLOCK 6 IN SAID CASADY'S ADDITION AND POINT OF BEGINNING; THENCE NORTH 38°11'17" WEST A DISTANCE OF 83.49 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 3, SAID POINT BEING 10.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY OF TWO PARALLEL RAILROAD TRACKS (THE MOST NORTHEASTERLY OF WHICH IS THE MAIN RAILROAD TRACK); THENCE NORTH 40°47'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 507.48 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 13°13'08" AND A RADIUS OF 710.00 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK AND ALONG SAID CURVE, AN ARC LENGTH OF 163.81 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 34°10'26" WEST, 163.44 FEET TO THE END OF SAID CURVE; THENCE NORTH 27°33'50" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 3.70 FEET TO A POINT ON THE WEST LINE OF LOT 11 OF SAID BLOCK 1; THENCE NORTH 0°36'02" WEST, ALONG THE WEST LINE OF LOTS 11 AND 12 OF SAID BLOCK 1, A DISTANCE OF 84.41 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 18°24'10" AND A RADIUS OF 595.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC LENGTH OF 191.11 FEET AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 33°32'05" EAST, 190.29 FEET TO THE END OF SAID CURVE; THENCE SOUTH 42°44'10" EAST A DISTANCE OF 136.46 FEET TO A POINT ON THE SOUTH LINE OF LOT 7 OF SAID BLOCK 1; THENCE SOUTH 40°35'09" EAST A DISTANCE OF 86.36 FEET TO A POINT ON THE NORTH LINE OF LOT 15 OF SAID BLOCK 3; THENCE SOUTH 40°40'21" EAST A DISTANCE OF 140.58 FEET TO A POINT ON THE WEST LINE OF A NORTH-SOUTH ALLEY; THENCE SOUTH 40°38'59" EAST A DISTANCE OF 53.31 FEET TO A POINT ON THE NORTH LINE OF LOT 3 OF SAID BLOCK 3; THENCE SOUTH 40°41'43" EAST A DISTANCE OF 89.12 FEET TO A POINT ON THE NORTH LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH 40°37'27" EAST A DISTANCE OF 58.00 FEET TO A POINT ON THE EAST LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH 40°30'49" EAST A DISTANCE OF 117.25 FEET TO A POINT ON THE NORTH LINE OF LOT 8 OF SAID BLOCK 5; THENCE SOUTH 40°38'57" EAST A DISTANCE OF 180.35 FEET TO A POINT ON THE EAST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH 40°38'28" EAST A DISTANCE OF 31.82 FEET TO A POINT ON THE SOUTH LINE OF AN EAST-WEST ALLEY; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 159.69 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 123.81 FEET TO A POINT ON THE WEST LINE OF LOT 53 OF SAID LINDA LOMA ADDITION; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 252.08 FEET; THENCE SOUTH 39°18'08" WEST A DISTANCE OF 25.09 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 9°57'46" AND A RADIUS OF 659.00 FEET, SAID POINT BEING 9.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MAIN RAILROAD TRACK;

THENCE NORTHWESTERLY AND PARALLEL WITH SAID MAIN RAILROAD TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 114.59 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 45°42'59" WEST, 114.44 FEET TO THE END OF SAID CURVE; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 100.75 FEET TO A POINT ON THE WEST LINE OF LOT 58 OF SAID LINDA LOMA ADDITION; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 102.25 FEET TO A POINT ON THE EAST LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 2.30 FEET TO A POINT 9.00 FEET SOUTHWESTERLY MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH 42°49'38" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 4.62 FEET TO A POINT ON THE NORTH LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH 42°49'38" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 14.20 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE SOUTHWESTERLY AND HAVING A CENTRAL ANGLE OF 4°45'26" AND A RADIUS OF 481.48 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 39.98 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 45°12'17" WEST, 39.97 FEET TO THE END OF SAID CURVE; THENCE NORTH 47°35'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 39.92 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH 89°34'34" WEST, ALONG THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5, A DISTANCE OF 9.57 FEET; THENCE NORTH 40°52'00" WEST A DISTANCE OF 100.74 FEET TO A POINT 9.50 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH 40°52'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 178.88 FEET TO A POINT ON THE WEST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH 0°32'10" EAST, ALONG THE WEST LINE OF LOT 7 OF SAID BLOCK 5, A DISTANCE OF 40.02 FEET; THENCE NORTH 55°56'12" WEST A DISTANCE OF 80.18 FEET TO A POINT OF THE EAST LINE OF LOT 1 OF SAID BLOCK 6; THENCE NORTH 0°32'10" WEST, ALONG THE EAST LINE OF LOT 1 OF SAID BLOCK 6, A DISTANCE OF 65.81 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 1.815 ACRES, MORE OR LESS. SAID PARCEL IS SUBJECT TO AN EASEMENT FOR STREET RIGHT OF WAY FOR RELOCATED 3RD STREET CONNECTION TO HARRY LANGDON BOULEVARD. SAID EASEMENT IS RECORDED IN BOOK 101, PAGE 24609 IN THE OFFICE OF THE POTTAWATTAMIE COUNTY RECORDER. SAID PARCEL IS ALSO SUBJECT TO ANY AND ALL OTHER EXISTING EASEMENTS, RESERVATIONS AND/OR RIGHTS-OF-WAY WHATSOEVER

NOTE: THE EAST LINE OF LOT 1 OF SAID BLOCK 6 IS ASSUMED TO BEAR NORTH 0°32'10" WEST FOR THIS DESCRIPTION.

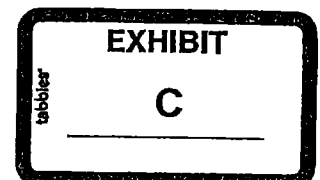
Return To: William Hughes, Esq, Stuart Tinley Law Firm, LLP, Qwest Building, 310 W. Kanesville Blvd., 2nd Floor, P.O. Box 398, Council Bluffs, Iowa 51502-0398
Preparer: William Hughes, Esq, Stuart Tinley Law Firm, LLP, Qwest Building, 310 W. Kanesville Blvd., 2nd Floor, P.O. Box 398, Council Bluffs, Iowa 51502-0398
Taxpayer: Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa, 1701 South 3rd Street, Council Bluffs, Iowa 51503

MEMORANDUM OF OPTION

NOTICE IS HEREBY GIVEN that the Easement Agreement dated _____, 2009, by and between RED GIANT OIL COMPANY, a Nebraska corporation authorized to do business in Iowa ("Red Giant") and MIDWEST WALNUT COMPANY OF IOWA, an Iowa corporation ("Midwest Walnut") recorded _____, 2009, in the office of the Recorder of Pottawattamie County, Iowa at Book _____, Page _____ ("Easement"), is the subject of an option as set forth in a written operating agreement entered into on the effective date of _____, 2009, by and between Red Giant and Midwest Walnut ("Operating Agreement"). Set forth herein are summaries of certain provisions of the Operating Agreement.

1. Real Estate. The real estate subject to the Easement is described on Exhibit "A", attached hereto and incorporated herein by this reference.
2. Term. The Operating Agreement provides for a term for the option commencing with the effective date of the Operating Agreement and continuing into perpetuity.
3. Option. The Operating Agreement provides that Red Giant has the option to purchase the Easement throughout the term of the option upon the occurrence of one or more events as specified by the Operating Agreement.
4. Notices. All notices which may be given under the Operating Agreement are considered as properly given, if delivered in writing, and personally delivered or placed in the United States mail, certified mail, return receipt requested, and addressed as follows:

If to Red Giant: Red Giant Oil Company
Attn: Sherryl Bills, President
1701 South 3rd Street
Council Bluffs, Iowa 51503



With copy to: William Hughes, Esq.
Stuart Tinley Law Firm, LLP
Qwest Building
310 W. Kanesville Blvd., 2nd Floor
Council Bluffs, IA 51502-0398

If to Midwest Walnut: Midwest Walnut Company of Iowa
Attn: Gary W. Keller, Chief Operating Officer
1914 Tostevin St.
Council Bluffs, IA 51501

With copy to: Steve Woolley, Esq.
McGill, Gotsdiner, Workman & Lepp, P.C., L.L. O.
11404 W. Dodge Road, Suite 500
Omaha, NE 68154-2584

Dated: _____, 2009

RED GIANT OIL COMPANY,
a Nebraska corporation authorized to do
business in Iowa

By: _____
Sherryl Bills, President

Dated: _____, 2009

MIDWEST WALNUT COMPANY OF IOWA,
an Iowa corporation

By: _____
Gerald W. Keller, Chief Operating Officer

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

This instrument was acknowledged before me on _____, 2008, by Gerald W. Keller as Chief Operating Officer of Midwest Walnut Company of Iowa, an Iowa corporation.

Notary Public

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

This instrument was acknowledged before me on _____, 2009, by Sherryl Bills, President of Red Giant Oil Company, a Nebraska corporation authorized to do business in Iowa.

Notary Public

EXHIBIT "A"

PARCEL 1:

A parcel of land located in part of Lots 6 and 7; Block 5 of the Casady's Addition to the City of Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the southwest corner of said Lot 7; thence North 0°32'10" West, along the East right of way line of vacated High Street and along the west line of said Lot 7, a distance of 30.79 feet to the Point of Beginning; thence continuing North 0°32'10" West, along said east right of way line and along the west line of said Lot 7, a distance of 40.02 feet to a point on the southwesterly right of way line of the Chicago and North Western Railway Company, predecessor to Union Pacific Railroad Company; thence South 40°52'00" East, along said southwesterly right of way line, a distance of 178.88 feet; thence North 50°46'11" West a distance of 150.62 feet to the Point of Beginning.

Containing 0.053 acres more or less

PARCEL 2:

Also A parcel of land located in part of Lots 1, 12, 13, 14, 15 and 16, all in Block 6 of Casady's Addition, Council Bluffs, Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the northeast corner of said Lot 1 and Point of Beginning; thence South 0°32'10" East, along the west right of way line of vacated High Street and along the east line of said Lot 1, a distance of 65.81 feet to a point on a non-tangent curve concave southwesterly and having a radius of 457.46 feet and a central angle of 29°36'34", a radial line through said point bears North 29°02'21" East; thence northwesterly, along said curve, an arc length of 236.41 feet and having a chord bearing and distance of North 75°45'56" West, 233.78 feet to the end of said curve; thence South 89°25'47" West a distance of 164.94 feet to the Beginning of a tangent circular curve concave northeasterly and having a radius of 497.46 feet and a central angle of 9°11'13"; thence northwesterly, along said curve, an arc length of 79.76 feet and having a chord bearing and distance of North 85°58'37" West, 79.68 feet to a point on the east right of way line of vacated 3rd Street and also, being the west line of said Lot 12; thence north 0°36'02" West, along said east right of way line and along the west line of said Lot 12, a distance of 0.89 feet to the northwest corner of said Lot 12; thence North 89°34'34" East, along the south right of way line of 18th Avenue and along the north line of said Block 6, a distance of 470.43 feet to the Point of Beginning.

Containing 0.169 acres more or less

NOTE: Parcels 1 and 2 as described above are one and the same parcels of land as described on the Exhibit A attached to the Easement Deed dated December 10, 1999, by and between Midwest Walnut Company, grantor, and Union Pacific Railroad Company, grantee, recorded on September 20, 2000, in the office of the Recorder of Pottawattamie County, Iowa at Book 101, Page 13179 ("Easement Deed"), and as Parcels "A" and "B" as described on the Plat of Survey

attached to the Easement Deed which is dated October 21, 1999, and was prepared by Carl H. Rogers, Jr.

PARCEL 3:

A tract of land lying in a part of 18th Avenue right of way in Casady's Addition to the City of Council Bluffs, Iowa more particularly described as follows:

Commencing at the Southeast corner of Lot 4, Block 2 of said Casady's Addition and point of beginning of said permanent easement; thence South 81°24'54" East a distance of 147.33 feet; thence North 89°25'47" East a distance of 164.94 feet to the beginning of a tangent circular curve concave southwesterly and having a radius of 507.46 feet and a central angle of 24°00'04"; thence southeasterly, along said curve, an arc length of 212.57 feet and having a chord bearing and distance of South 78°34'11" East, 211.02 feet to a point on the South right of way line of said 18th Avenue and also, being the North line of Block 6 of said Casady's Addition; thence South 89°34'34" West, along said South right of way line and along the North line of said Block 6, a distance of 450.78 feet to the Northwest corner of Lot 12 of said Block 6; thence South 0°36'02" East, along the West line of said Lot 12, a distance of 0.89 feet to a point on a non-tangent curve concave northeasterly and having a radius of 497.46 feet and a central angle of 5°52'58", a radial line through said point bears South 8°37'00" West; thence northwesterly, along said curve, an arc length of 51.08 feet and having a chord bearing and distance of North 78°26'31" West, 51.05 feet to the end of said curve; thence North 45°34'19" West a distance of 79.74 feet to a point on the North right of way line of said 18th Avenue and also, being the South line of said Lot 4; thence North 89°29'39" East, along said North right of way line and along the South line of said Lot 4, a distance of 40.26 feet to the point of beginning of said permanent easement. Said permanent easement contains 21,401 square feet, more or less, or 0.491 of an acre, more or less.

NOTE: The South line of said Lot 4 is assumed to bear North 89°29'39" East for this description.

FURTHER NOTE: Parcel 3 as described above is one and the same parcel of land as described on the Exhibit "A" attached to the Easement for Railroad Right of Way dated March 23, 2000, by and between City of Council Bluffs, Iowa, grantor, and Union Pacific Railroad Company, grantee, recorded on April 4, 2000, in the office of the Recorder of Pottawattamie County, Iowa as Instrument No. 16452, Book 100, Page 45956.

PARCEL 4:

EXCEPT FOR THE PORTION THEREOF WHICH LIES NORTH OF THE SOUTHERN EDGE OF EIGHTEENTH AVENUE, COUNCIL BLUFFS, IOWA AS LOCATED AS OF THE DATE OF THIS DEED, A PARCEL OF LAND LOCATED IN PART OF BLOCKS 1, 3, 5 AND 10, AND A PART OF ALLEYS AND PART OF VACATED ALLEYS IN SAID BLOCKS IN CASADY'S ADDITION, AND PARTS OF 18TH AVENUE, SOUTH AVENUE AND RELOCATED 3RD STREET CONNECTION AND ALSO, PARTS OF VACATED 17TH AVENUE, VACATED 19TH AVENUE AND VACATED HIGH STREET, AND PART OF LOT 53 AND PART OF LOT 58 IN LINDA LOMA ADDITION, COUNCIL BLUFFS, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 6 IN SAID CASADY'S ADDITION AND POINT OF BEGINNING; THENCE NORTH 38°11'17" WEST A DISTANCE OF 83.49 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 3, SAID POINT BEING 10.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY OF TWO PARALLEL RAILROAD TRACKS (THE MOST NORTHEASTERLY OF WHICH IS THE MAIN RAILROAD TRACK); THENCE NORTH 40°47'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 507.48 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 13°13'08" AND A RADIUS OF 710.00 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK AND ALONG SAID CURVE, AN ARC LENGTH OF 163.81 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 34°10'26" WEST, 163.44 FEET TO THE END OF SAID CURVE; THENCE NORTH 27°33'50" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 3.70 FEET TO A POINT ON THE WEST LINE OF LOT 11 OF SAID BLOCK 1; THENCE NORTH 0°36'02" WEST, ALONG THE WEST LINE OF LOTS 11 AND 12 OF SAID BLOCK 1, A DISTANCE OF 84.41 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 18°24'10" AND A RADIUS OF 595.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC LENGTH OF 191.11 FEET AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 33°32'05" EAST, 190.29 FEET TO THE END OF SAID CURVE; THENCE SOUTH 42°44'10" EAST A DISTANCE OF 136.46 FEET TO A POINT ON THE SOUTH LINE OF LOT 7 OF SAID BLOCK 1; THENCE SOUTH 40°35'09" EAST A DISTANCE OF 86.36 FEET TO A POINT ON THE NORTH LINE OF LOT 15 OF SAID BLOCK 3; THENCE SOUTH 40°40'21" EAST A DISTANCE OF 140.58 FEET TO A POINT ON THE WEST LINE OF A NORTH-SOUTH ALLEY; THENCE SOUTH 40°38'59" EAST A DISTANCE OF 53.31 FEET TO A POINT ON THE NORTH LINE OF LOT 3 OF SAID BLOCK 3; THENCE SOUTH 40°41'43" EAST A DISTANCE OF 89.12 FEET TO A POINT ON THE NORTH LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH 40°37'27" EAST A DISTANCE OF 58.00 FEET TO A POINT ON THE EAST LINE OF LOT 4 OF SAID BLOCK 3; THENCE SOUTH 40°30'49" EAST A DISTANCE OF 117.25 FEET TO A POINT ON THE NORTH LINE OF LOT 8 OF SAID BLOCK 5; THENCE SOUTH 40°38'57" EAST A DISTANCE OF 180.35 FEET TO A POINT ON THE EAST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH 40°38'28" EAST A DISTANCE OF 31.82 FEET TO A POINT ON THE SOUTH LINE OF AN EAST-WEST ALLEY; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 159.69 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 123.81 FEET TO A POINT ON THE WEST LINE OF LOT 53 OF SAID LINDA LOMA ADDITION; THENCE SOUTH 40°36'28" EAST A DISTANCE OF 252.08 FEET; THENCE SOUTH 39°18'08" WEST A DISTANCE OF 25.09 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A CENTRAL ANGLE OF 9°57'46" AND A RADIUS OF 659.00 FEET, SAID POINT BEING 9.00 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MAIN RAILROAD TRACK; THENCE NORTHWESTERLY AND PARALLEL WITH SAID MAIN RAILROAD

TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 114.59 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 45°42'59" WEST, 114.44 FEET TO THE END OF SAID CURVE; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 100.75 FEET TO A POINT ON THE WEST LINE OF LOT 58 OF SAID LINDA LOMA ADDITION; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 102.25 FEET TO A POINT ON THE EAST LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH 40°44'06" WEST, AND PARALLEL WITH SAID MAIN RAILROAD TRACK, A DISTANCE OF 2.30 FEET TO A POINT 9.00 FEET SOUTHWESTERLY MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID UNION PACIFIC RAILROAD COMPANY'S MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH 42°49'38" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 4.62 FEET TO A POINT ON THE NORTH LINE OF LOT 1 OF SAID BLOCK 10; THENCE NORTH 42°49'38" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 14.20 FEET TO THE BEGINNING OF A TANGENT CIRCULAR CURVE CONCAVE SOUTHWESTERLY AND HAVING A CENTRAL ANGLE OF 4°45'26" AND A RADIUS OF 481.48 FEET; THENCE NORTHWESTERLY, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, AND ALONG SAID CURVE AN ARC LENGTH OF 39.98 FEET AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 45°12'17" WEST, 39.97 FEET TO THE END OF SAID CURVE; THENCE NORTH 47°35'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 39.92 FEET TO A POINT ON THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5; THENCE SOUTH 89°34'34" WEST, ALONG THE SOUTH LINE OF LOT 4 OF SAID BLOCK 5, A DISTANCE OF 9.57 FEET; THENCE NORTH 40°52'00" WEST A DISTANCE OF 100.74 FEET TO A POINT 9.50 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SAID MOST SOUTHWESTERLY RAILROAD TRACK; THENCE NORTH 40°52'00" WEST, AND PARALLEL WITH SAID MOST SOUTHWESTERLY RAILROAD TRACK, A DISTANCE OF 178.88 FEET TO A POINT ON THE WEST LINE OF LOT 7 OF SAID BLOCK 5; THENCE SOUTH 0°32'10" EAST, ALONG THE WEST LINE OF LOT 7 OF SAID BLOCK 5, A DISTANCE OF 40.02 FEET; THENCE NORTH 55°56'12" WEST A DISTANCE OF 80.18 FEET TO A POINT OF THE EAST LINE OF LOT 1 OF SAID BLOCK 6; THENCE NORTH 0°32'10" WEST, ALONG THE EAST LINE OF LOT 1 OF SAID BLOCK 6, A DISTANCE OF 65.81 FEET TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 1.815 ACRES, MORE OR LESS. SAID PARCEL IS SUBJECT TO AN EASEMENT FOR STREET RIGHT OF WAY FOR RELOCATED 3RD STREET CONNECTION TO HARRY LANGDON BOULEVARD. SAID EASEMENT IS RECORDED IN BOOK 101, PAGE 24609 IN THE OFFICE OF THE POTTAWATTAMIE COUNTY RECORDER. SAID PARCEL IS ALSO SUBJECT TO ANY AND ALL OTHER EXISTING EASEMENTS, RESERVATIONS AND/OR RIGHTS-OF-WAY WHATSOEVER

NOTE: THE EAST LINE OF LOT 1 OF SAID BLOCK 6 IS ASSUMED TO BEAR NORTH 0°32'10" WEST FOR THIS DESCRIPTION.

IOWA INTERSTATE RAILROAD, LTD.
RAILROAD INDUSTRY TRACK AGREEMENT

THIS AGREEMENT, made and entered into this 26 day of August, 2011 by and between IOWA INTERSTATE RAILROAD, LTD. (hereinafter called the "Company") and RED GIANT OIL COMPANY, (hereinafter called the "Industry").

WITNESSETH:

WHEREAS, the Industry owns the following two segments of railroad trackage, located in Council Bluffs, IA:

- A. A portion of rail line previously owned by Union Pacific Railroad Company ("UP") and known as the Great Western Industrial Lead ("the Lead"), extending between UP Mileposts 503.6 and 504.05, a distance of 0.45-miles; and
- B. A portion of rail line previously owned by the UP and known as the UP Connector Track begins at Milepost 503.85 on the Lead and extends to Milepost 486.8 on the IAIS Line, a distance of approximately 400-feet.

This trackage, collectively comprising the "Industry Track," is depicted on the map marked as **Exhibit A**, which is attached hereto, and is hereby made a part of this Agreement.

WHEREAS, the Company presently services the Industry Track and will continue to service the Industry Track as a common carrier by rail;

WHEREAS, the Company's service of the Industry Track is subject to the authority of the United States Surface Transportation Board ("STB") and service cannot be abandoned or discontinued without the STB's authority; and

WHEREAS, the Company and the Industry agree that the Industry shall be responsible for the maintenance of the Industry Track, in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises, it is hereby agreed between the parties hereto as follows:

1. **RIGHT OF WAY AND PUBLIC AUTHORITY AND AUTHORITY AND ASSESSMENTS.** The Industry shall procure and furnish, without expense to the Company, all necessary right of way, including all necessary authority and permission, public or private, for the maintenance and operation of the Industry Track, and shall pay all compensation and assessments required at any time by any municipality, governmental agency, or person for the privilege of maintaining and operating the Industry Track, and all special assessments, taxes and the expense of all requirements in connection with any public improvements, levied or made against, upon, or on account of the Industry Track.
2. **MAINTENANCE.** The Industry shall bear and pay the cost and expense of maintenance of the Industry Track beginning – and including – at the switch that connects the Industry Track to the Company's main railroad line to the end of the Industry Track. The term

"maintenance" as used in this paragraph is intended to and shall include, in addition to repairs, all additions, betterments, and changes to the Industry Track, and the removal of snow, ice, weeds, and other obstructions. The necessity for such maintenance shall be determined by the Company. In the event that Industry fails to maintain the Industry Track in accordance with its obligations under this Section 2, the Company, and any successor railroad operator, shall have the right to perform track maintenance, and the Industry shall reimburse the Company for any costs or expenses incurred in connection with such track maintenance. In addition, the Company reserves the right to install, maintain, and operate such derails, signals, and other safety devices and to employ such flagmen or other employees, as in the judgment of the Company for the safe operation of the Industry Track, or as may be required by public authority, and the Industry agrees to pay to the Company the related costs and expenses.

3. CHANGES AND ADDITIONS. The Industry shall bear and pay the cost and expense of all present and future changes in the Industry Track rendered necessary by changes in other tracks, or in the Company's property, or operating requirements. The Industry shall bear and pay the cost and expense of all other present or future changes in or additions to all tracks and property, regardless of the ownership thereof, and also of all construction, made necessary by the maintenance or operation of the Industry Track of any changes thereon. This paragraph shall apply to electrification, track elevation or depressions, and grade separation, as well as any other repairs, additions, betterments, or changes whatsoever.
4. PAYMENT IN ADVANCE FOR ITEMS TO BE FURNISHED BY THE COMPANY.
Not applicable.
5. SERVICE. The Company, which will service the Industry Track as a common carrier, will deliver and receive all freight in carload lots consigned to or from the Industry. The operations and train movements involving the delivery and receipt of freight will be at the agreement of the Company and Industry. All such service is to be performed subject to legal requirements and in conformity with rates, rules, and regulations contained in lawfully published tariffs. The Company may not abandon or discontinue operations over the Industry Track unless and until the Company files a petition with and obtains lawful abandonment or discontinuance authority with respect to the Industry Track from the STB or successor agency, and exercises such authority.
6. OBSTRUCTIONS AND CLEARANCES, CHANGES AND OPERATING RULES. The Industry shall not place, or permit to be placed any equipment, material, structure, pole, or other obstruction, or any excavation within 9.0-feet, on straight track or 10.5-feet on curved track, laterally of the center, or within 23-feet vertically from the top of the rail of the Industry Track. The Company's knowledge of any obstruction and any operation on the Industry Track shall not constitute a waiver of this covenant. The number of feet of clearance specified may be changed by the Company at any time to meet new operating or legal requirements, by giving written notice to the Industry. Within 10-days after receipt of such notice, the Industry and Company shall proceed to jointly prepare and file with the applicable government authorities a written application for waiver as to the Industry Track of any such legal requirements. The Industry shall observe and comply with all rules and

regulations of the Company concerning the use and operation of the Industry Track and the loading, unloading, and movement of cars thereon.

7. USE OF THE TRACK. The Company shall have the unrestricted right to use the Industry Track, or any extension thereof, for any and all railroad purposes, including those in fulfillment of its common carrier obligation and not in conflict with Industry's business purposes.
8. FIRE INDEMNITY CLAUSE. It is understood that the movement of railroad locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Company against loss or damage to property of the Industry or to property upon its premises, arising from fire caused by locomotives operated by the Company on the Industry Track, or in its vicinity for the purpose of serving said Industry.
9. GENERAL INDEMNITY CLAUSE. The Industry agrees to indemnify and hold harmless the Company for any loss, damage, injury, death, costs, expenses, and litigation expenses (including, but not limited to court costs & fees, expert expenses & fees, and attorney fees) from any act or omission of the Industry, its employees, or agents, to the person or property of the parties and their employees, and to the person or property of any other person or corporation, while on the Industry Track or conducting operations involving the Industry Track. If any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them in proportion to their respective level of negligence.
10. ENVIRONMENTAL AND OCCUPATIONAL INDEMNITY CLAUSE. Notwithstanding anything herein to the contrary, Industry agrees that it will comply with applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety, and Industry agrees to indemnify and hold harmless the Company for any and all claims, demands, injuries, damages, lawsuits, loss, or other liability for any loss, fines, damages to persons or property, injuries, death, and all litigation expenses (including, but not limited to court costs & fees, expert expenses & fees, and attorney fees) resulting from or arising out of the Industry Track, including any discharge or emission therefrom or for the violation of any law, standard, regulation, or permit requirement relating to environmental pollution or contamination or to occupational health and safety.
11. END CLEARANCE. In the event any equipment, material, structure, pole, or other article or obstruction shall be placed within fifteen (15) feet of the end of the Industry Track by the Industry, then the Industry hereby assumes all responsibility for and agrees to indemnify the Company against all liability on account of loss or damage to property and injury to or death of any person or persons whatsoever caused by engines, cars, trains, or other equipment running off the end of the Industry Track.
12. TERMINATION. The Company shall have the right, at its option, to terminate this Agreement; HOWEVER, PROVIDED that termination of this agreement shall not relieve the Company of its common carrier obligation with respect to the Industry Track. The

Company's common carrier obligation shall continue unless and until such time as the Company files a petition with and obtains lawful abandonment or discontinuance authority with respect to the Industry Track from the STB or successor agency, and it exercises such authority. In the event the Company obtains and exercises lawful abandonment or discontinuance authority, the Company shall have the right, at its option, to discontinue operations over the Industry Track and cease service to the Industry and any other shippers located on the Industry Track. Thereafter, at any time, at the expense of the Industry, the Company may disconnect the Industry Track and take up and remove all or any part thereof owned by the Company (and may restore any property, upon which same is located, to its former condition).

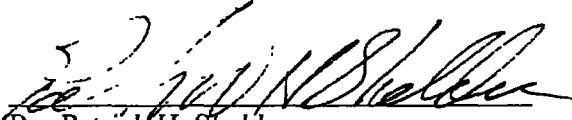
13. ASSIGNMENT. Neither party may assign this Agreement without prior written approval by the other party of the assignment, or any interest therein. In addition, Company must also obtain the approval of any assignment by it from the applicable Federal Agency. Subject to the above limitation, this Agreement shall be binding upon the respective parties, and their respective heirs, executors, administrators, and successors.
14. PERFORMANCE. In the event any of the terms or provisions of this Agreement have been carried out or performed prior to the date of execution hereof, it is understood and agreed that this Agreement shall nevertheless be of the same force and effect as though same had been executed by the parties prior to such performance.
15. FORCE MAJEURE. The Company shall not be obligated to operate on the Industry Track if it shall be prevented or hindered from doing by acts of God, public authority, strikes, riots, labor disputes, or any cause beyond its control.
16. INTEREST OF IOWA INTERSTATE RAILROAD, LTD. This Agreement shall inure to the benefit of and be binding upon (i) the parties of the Agreement, (ii) the successors and assigns of the parties, including without limitation, Iowa Interstate Railroad, Ltd. ("IAIS") and IAIS's successors and assigns, and (iii) the person, firm, partnership, or corporation other than IAIS that may be duly designated by IAIS or future owner of the aforesaid lines of railroad and Industry Track as the one (1) sole operator designated to conduct freight operations over the lines of railroad and the Industry Track.
17. GOVERNING LAW AND PERFORMANCE. This Agreement shall be performed by the Industry in the City of Council Bluffs, Pottawattamie County, Iowa. In the event the Industry is non-resident of the State of Iowa, said performance of this Agreement shall be deemed as doing business in Iowa, shall be deemed to constitute the appointment of the Secretary of State of Iowa to be said non-resident's true and lawful attorney upon whom may be served process under Section 617.3 Code of Iowa (1985) and any process or original notice served under said statute shall be of the same legal force and effect as of served personally upon the Industry within the State of Iowa. The parties intend this Agreement to be executed in, and interpreted, construed and enforced in accordance with the laws of the State of Iowa. (24).
18. LEGAL FEES. In case of any action, claim or any proceeding in which a dispute arises concerning this Agreement, the Industry shall pay all reasonable costs, expenses and

litigation expenses (including, but not limited to court costs & fees, expert expenses & fees, and attorney fees) in connection therewith.

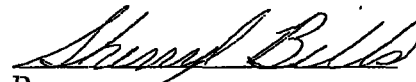
19. IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year herein above stated.

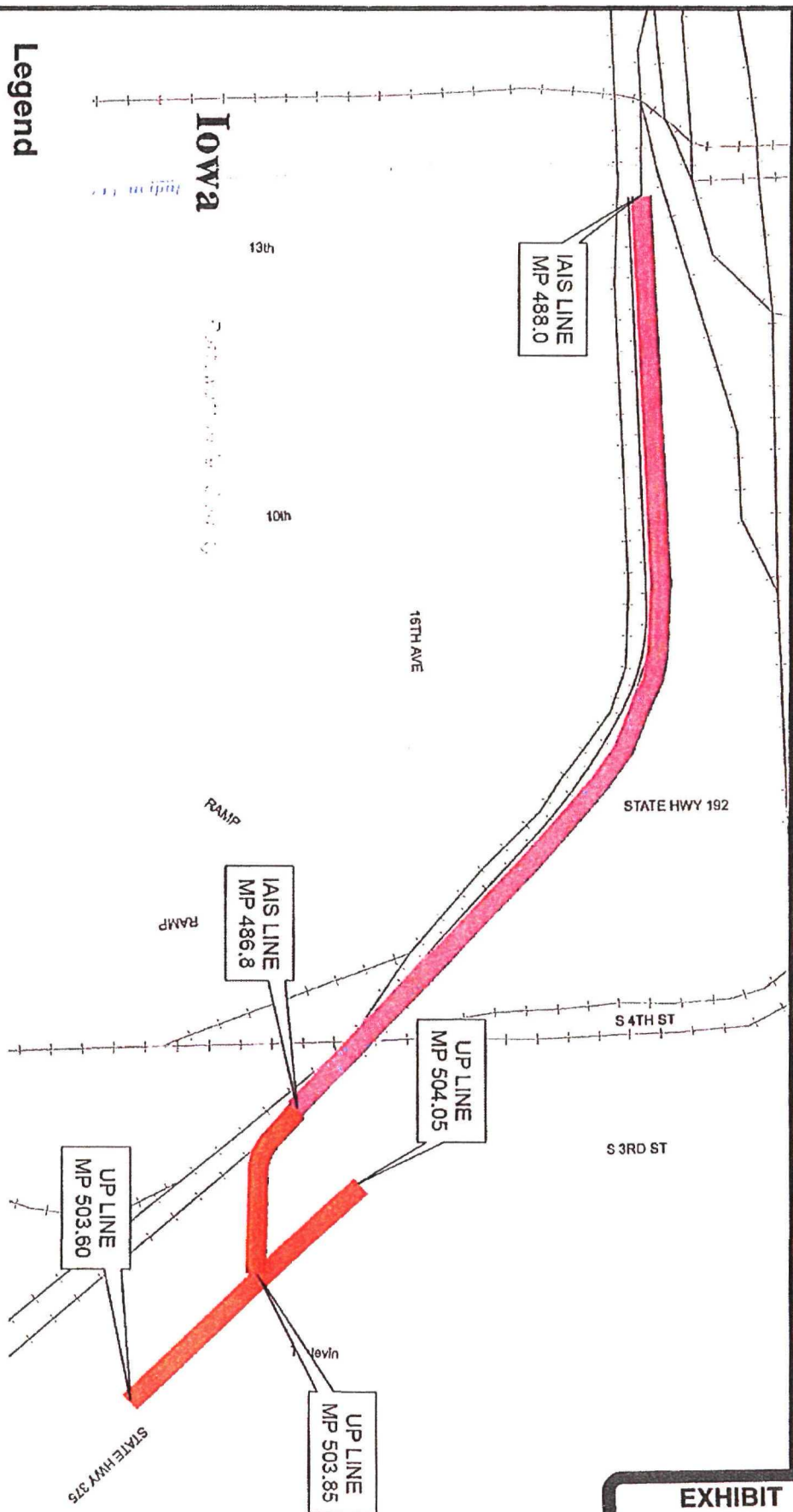
THE COMPANY AND INDUSTRY ACKNOWLEDGE THAT THEY HAVE FULLY READ ALL THE TERMS OF THIS RAILROAD INDUSTRY TRACK AGREEMENT AND ACKNOWLEDGE THAT THEY FULLY UNDERSTAND ALL THE TERMS OF THE RAILROAD INDUSTRY TRACK AGREEMENT. IN ADDITION, THE PARTIES ACKNOWLEDGE AND RECOGNIZE THAT THE SIGNATURES BELOW SIGNIFY THEIR UNDERSTANDING OF THIS LEASE AGREEMENT AND SIGNIFY THEIR INTENT TO FULLY ADHERE TO ALL THE TERMS OF THIS AGREEMENT.

IOWA INTERSTATE RAILROAD, LTD.


By: Patrick H. Sheldon
Title: Vice President of Engineering

RED GIANT OIL COMPANY


By:
Title: *president*

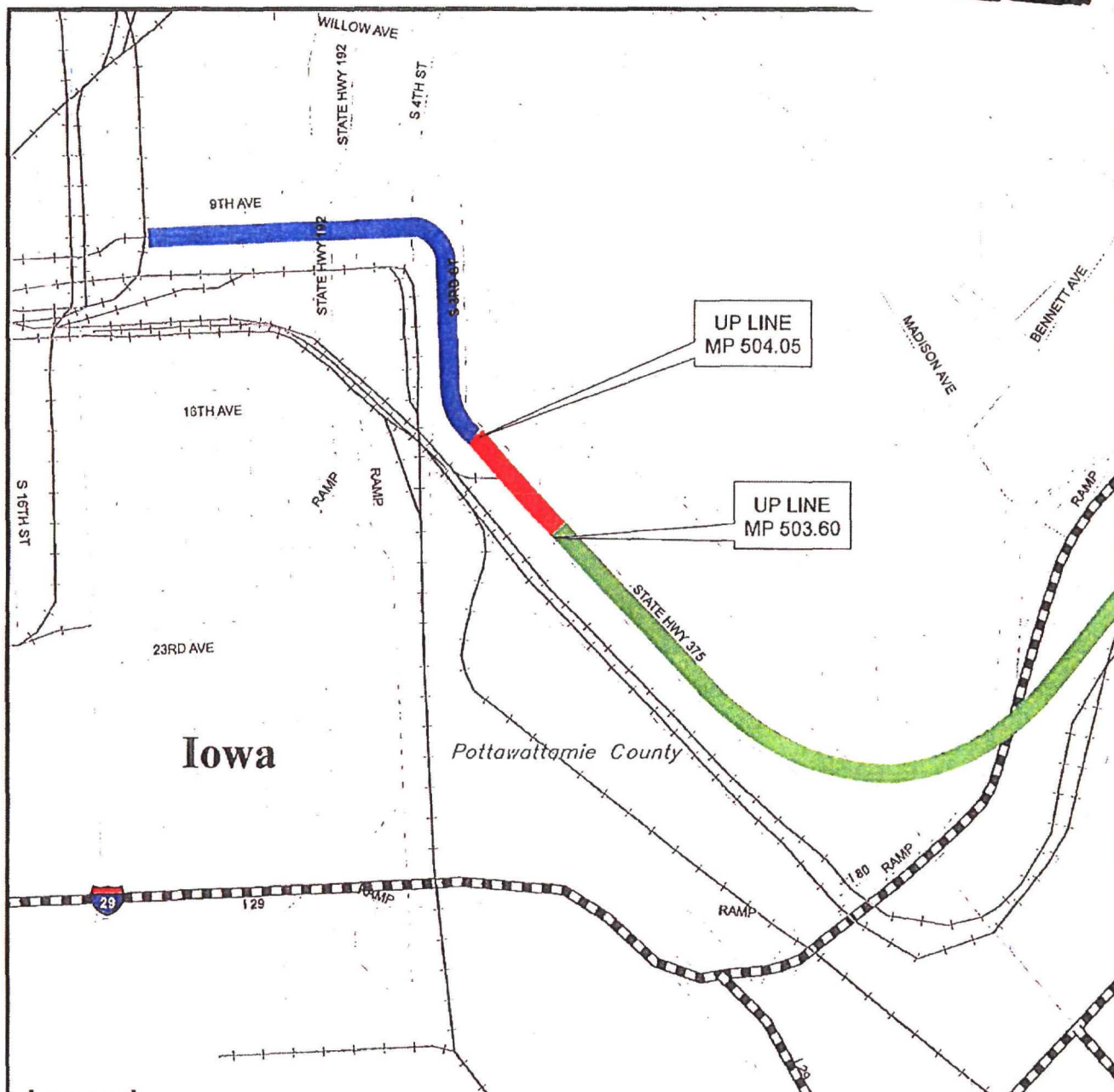


Legend

- UP LINE (TO BE ABANDONED BY UP) AND (IAIS TO DISCONTINUE TRACKAGE RIGHTS THEREON)
- IAIS LINE (UP TO DISCONTINUE OVERHEAD TRACKAGE RIGHTS THEREON)
- CONNECTING TRACK (TO BE ABANDONED BY UP) AND (IAIS TO DISCONTINUE TRACKAGE RIGHTS THEREON)
- OTHER RAILROADS
- PRINCIPAL HIGHWAYS
- OTHER ROADS

THE PROPOSED TRANSACTION

UNION PACIFIC RAILROAD CO.
GREAT WESTERN INDUSTRIAL LEAD
IOWA



Legend

- UP LINE (IAIS TO ACQUIRE OPERATING RIGHTS AND COMMON CARRIER OBLIGATIONS)
- ABANDONED IN 1971
- ABANDONED IN 2000
- OTHER RAILROADS
- PRINCIPAL HIGHWAYS
- OTHER ROADS

PRIOR ABANDONMENTS

UP LINE -
MP 503.6 TO MP 504.05
TOTAL OF 0.45 MILES
IAIS LINE - MP 486.8 TO 488.0
TOTAL OF 1.2 MILES
IN POTTAWATTAMIE COUNTY, IOWA

UNION PACIFIC RAILROAD CO.

EXHIBIT
A-2

IOWA INTERSTATE RAILROAD, LTD.
RAILROAD INDUSTRY TRACK AGREEMENT

THIS AGREEMENT, made and entered into this 24th day of August, 2011 by and between IOWA INTERSTATE RAILROAD, LTD. (hereinafter called the "Company") and MIDWEST WALNUT COMPANY OF IOWA (hereinafter called the "Industry").

WITNESSETH:

WHEREAS, the Industry has or will be granted a property easement from RED GIANT OIL COMPANY ("Red Giant") to operate on the following two segments of railroad trackage, located in Council Bluffs, IA:

- A. That portion of a portion of rail line previously owned by Union Pacific Railroad Company ("UP") and known as the Great Western Industrial Lead ("the Lead"), extending between UP Mileposts 503.6 and 504.05, a distance of 0.45-miles that lies south of the southern edge of Eighteenth Ave., Council Bluffs, Iowa, as located as of the date of this Agreement; and
- B. A portion of rail line previously owned by the UP and known as the UP Connector Track begins at Milepost 503.85 on the Lead and extends to Milepost 486.8 on the LAIS Line, a distance of approximately 400-feet.

This trackage, collectively comprising the "Industry Track," is depicted on the map marked as **Exhibit A**, which is attached hereto, and is hereby made a part of this Agreement;

WHEREAS, the easement referenced above is granted to Industry pursuant to the terms and provisions of an Operating Agreement - Amended dated October 16, 2009, entered into by and between Industry and Red Giant (the "Operating Agreement");

WHEREAS, the Company presently services the Industry Track and will continue to service the Industry Track as a common carrier by rail; and

WHEREAS, the Company's service of the Industry Track is subject to the authority of the United States Surface Transportation Board ("STB") and service cannot be abandoned or discontinued without the STB's authority.

NOW THEREFORE, in consideration of the premises, it is hereby agreed between the parties hereto as follows:

1. **RIGHT OF WAY AND PUBLIC AUTHORITY AND AUTHORITY AND ASSESSMENTS.** Until such time as Industry exercises its rights under the Operating Agreement and becomes responsible for maintenance of the Industry Track pursuant to the terms of the Operating Agreement, then Red Giant shall be the party responsible to procure and furnish, without expense to the Company, all necessary right of way, including all necessary authority and permission, public or private, for the maintenance and operation of the Industry Track, and shall pay all compensation and assessments required at any time by

any municipality, governmental agency, or person for the privilege of maintaining and operating the Industry Track, and all special assessments, taxes and the expense of all requirements in connection with any public improvements, levied or made against, upon, or on account of the Industry Track.

2. **MAINTENANCE.** Except as hereafter stated in this paragraph, Red Giant shall be responsible to bear and pay the cost and expense of maintenance of the Industry Track beginning – and including – at the switch that connects the Industry Track to the Company's main railroad line to the end of the Industry Track. The term "maintenance" as used in this paragraph is intended to and shall include, in addition to repairs, all additions, betterments, and changes to the Industry Track, and the removal of snow, ice, weeds, and other obstructions. The necessity for such maintenance shall be determined by the Company in the exercise of its reasonable discretion. In the event that Red Giant fails to maintain the Industry Track in accordance with its obligations under this Section 2, the Company, and any successor railroad operator, shall have the right to perform track maintenance, and Red Giant shall be responsible to reimburse the Company for any costs or expenses incurred in connection with such track maintenance. In addition, the Company reserves the right to install, maintain, and operate such derails, signals, and other safety devices and to employ such flagmen or other employees, as in the judgment of the Company for the safe operation of the Industry Track, or as may be required by public authority, and Red Giant shall be responsible to pay to the Company the related costs and expenses. If (a) the Industry becomes responsible for maintenance of the Industry Track pursuant to the terms of the Operating Agreement, and (b) does not send Company the written notice hereafter specified at the end of this sentence in the manner specified at Paragraph 13 of this Agreement (the "Notice"), then and thereafter until the Notice is sent to Company, the Industry shall bear and pay the cost and expense of maintenance as described above of the Industry Track beginning – and including – at the switch that connects the Industry Track to the Company's main railroad line to the end of the Industry Track, except that the necessity for such maintenance shall be determined by the Company in the exercise of its reasonable discretion after good faith consultation with the Industry. At any time after Industry becomes responsible for maintenance of the Industry Track pursuant to the terms of the Operating Agreement, Industry may send written notice to Company that it has decided to abandon the Industry Track. Once Industry has sent the Notice to Company in the manner specified at Paragraph 13 of this Agreement, neither Company nor Industry shall have any further obligations to each other under this Agreement which shall then stand terminated and Company shall then be entitled to seek the termination of its common carrier obligation with respect to the Industry Track. Industry shall assist Company in all ways reasonably requested of it by Company in relation to the requested termination of Company's common carrier obligation.
3. **CHANGES AND ADDITIONS.** Except as stated in the last sentence to this paragraph, Red Giant shall be responsible to bear and pay the cost and expense of all present and future changes in the Industry Track rendered necessary by changes in other tracks, or in the Company's property, or operating requirements. Except as stated in the last sentence to this paragraph, Red Giant shall be responsible to bear and pay the cost and expense of all other present or future changes in or additions to the Industry Track, regardless of the ownership thereof, and also of all construction, made necessary by the maintenance or operation of the

Industry Track of any changes thereon. This paragraph shall apply to electrification, track elevation or depressions, and grade separation, as well as any other repairs, additions, betterments, or changes whatsoever. If the Industry becomes responsible for maintenance of the Industry Track pursuant to the terms of the Operating Agreement, then and thereafter (until the Notice specified in Paragraph 2 above is sent to Company in the manner specified at Paragraph 13 of this Agreement) the Industry shall bear and pay the cost and expense of the changes and additions to the Industry Track as specified by this paragraph, except that the necessity for such changes (other than changes mandated by law) shall be determined by the Company in the exercise of its reasonable discretion after good faith consultation with the Industry.

4. PAYMENT IN ADVANCE FOR ITEMS TO BE FURNISHED BY THE COMPANY.
Not applicable.

5. SERVICE. The Company, which will service the Industry Track as a common carrier, will deliver and receive all freight in carload lots consigned to or from the Industry. The operations and train movements involving the delivery and receipt of freight will be at the agreement of the Company and Industry. All such service is to be performed subject to legal requirements and in conformity with rates, rules, and regulations contained in lawfully published tariffs. The Company may not abandon or discontinue operations over the Industry Track unless the Company obtains lawful abandonment or discontinuance authority with respect to the Industry Track from the STB or successor agency, and exercises such authority.

6. OBSTRUCTIONS AND CLEARANCES, CHANGES AND OPERATING RULES. Except as hereafter stated, the Industry shall not place, or permit to be placed any equipment, material, structure, pole, or other obstruction, or any excavation within 9.0-feet, on straight track or 10.5-feet on curved track, laterally of the center, or within 23-feet vertically from the top of the rail of the Industry Track. The Company's knowledge of any obstruction and any operation on the Industry Track shall not constitute a waiver of this covenant. The number of feet of clearance specified may be changed by the Company at any time to meet new legal requirements, by giving written notice to the Industry. Within 10-days after receipt of such notice, the Industry and Company shall proceed to jointly prepare and file with the applicable government authorities a written application for waiver as to the Industry Track of any such legal requirements. The Industry shall observe and comply with all published industry standards as from time to time adopted by the Company concerning the use and operation of the Industry Track and the loading, unloading, and movement of cars thereon. Notwithstanding the foregoing, the restrictions and requirements specified in this paragraph shall not apply to or in any way affect structures located on Industry owned property as of the date of this Agreement or that replace such currently existing structures and that are no closer to the Industry Track than are the currently existing structures. Attached hereto, marked Exhibit "A" and made a part hereof by this reference is an aerial map of the relevant portion of the Industry Track showing the currently existing Industry structures adjacent to the Industry Track.

7. USE OF THE TRACK. The Company shall have the unrestricted right to use the Industry Track, or any extension thereof, for any and all purposes required in fulfillment of its common carrier obligation with respect to the Industry Track and not in conflict with Industry's business purposes.
8. FIRE INDEMNITY CLAUSE. It is understood that the movement of railroad locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Company against loss or damage to property of the Industry or to property upon its premises, arising from fire caused by locomotives operated by the Company on the Industry Track, or in its vicinity for the purpose of serving said Industry.
9. GENERAL INDEMNITY CLAUSE. The Industry agrees to indemnify and hold harmless the Company for any loss, damage, injury, death, costs, expenses, and litigation expenses (including, but not limited to court costs & fees, expert expenses & fees, and attorney fees) from any act or omission of the Industry, its employees, or agents, to the person or property of the parties and their employees, and to the person or property of any other person or corporation, while on the Industry Track or conducting operations involving the Industry Track. If any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them in proportion to their respective level of negligence.
10. ENVIRONMENTAL AND OCCUPATIONAL INDEMNITY CLAUSE. Notwithstanding anything herein to the contrary, Industry agrees that it will comply with applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety, and Industry agrees to indemnify and hold harmless the Company for any and all claims, demands, injuries, damages, lawsuits, loss, or other liability for any loss, fines, damages to persons or property, injuries, death, and all litigation expenses (including, but not limited to court costs & fees, expert expenses & fees, and attorney fees) resulting from or arising out of acts of Industry on the Industry Track, including any discharge or emission therefrom or for the violation of any law, standard, regulation, or permit requirement relating to environmental pollution or contamination or to occupational health and safety.
11. END CLEARANCE. In the event any equipment, material, structure, pole, or other article or obstruction shall be placed within fifteen (15) feet of the end of the Industry Track by the Industry, then the Industry hereby assumes all responsibility for and agrees to indemnify the Company against all liability on account of loss or damage to property and injury to or death of any person or persons whatsoever caused by engines, cars, trains, or other equipment running off the end of the Industry Track.
12. TERMINATION. Company shall have the right, at its option, to terminate this Agreement; HOWEVER, PROVIDED that termination of this agreement shall not relieve the Company of its common carrier obligation with respect to the Industry Track. The Company's common carrier obligation shall continue until such time as the Company obtains lawful abandonment or discontinuance authority with respect to the Industry Track from the STB or successor agency, and it exercises such authority. In the event the Company obtains and

exercises lawful abandonment or discontinuance authority, the Company shall have the right, at its option, to discontinue operations over the Industry Track and cease service to the Industry and any other shippers located on the Industry Track. Thereafter, at any time, at its expense, the Company shall take up and remove all or any part of the Industry Track that is then owned by the Company (and shall restore any property, upon which same is located, to its former condition). Industry shall have the right, at its option, to terminate this Agreement at any time after Company's common carrier obligation ceases with respect to the Industry Track.

13. **NOTICES.** All notices required or authorized by this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail, at such email addresses as Company or Industry, as applicable, may designate to each other in accordance herewith, or telefacsimile to Company or Industry, as the case may be, at the addresses set forth below:

If to Company:

Iowa Interstate Railroad, Ltd.
5900 6th S.W.
Cedar Rapids, Iowa 52404
Attention: Dennis H. Miller, President
Fax Number: (319) 298-5456
Email: dhmiller@iaisrr.com

With copies to:

Lanny M. VanDaele, Corporate Counsel
Iowa Interstate Railroad, Ltd.
5900 6th S.W.
Cedar Rapids, Iowa 52404
Fax Number: (319) 298-5456
Email: lmvandaele@iaisrr.com

If to Company:

Midwest Walnut Company of Iowa
1914 Tostevin Street
Council Bluffs, Iowa 51501
Attention: Gary W. Keller, Chief Operating Officer
Fax Number: (712) 325-0156
Email: kellergb@aol.com

With copies to:

Steven J. Woolley
McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O.
First National Plaza - Suite 500
11404 West Dodge Road
Omaha, Nebraska 68154-2584
Fax Number: (402) 492-9222
Email: stevewoolley@mgwl.com

Company and Industry may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands

sent in accordance with this Paragraph 13 shall be deemed received when sent by the sending party by way of any method set forth above.

14. ASSIGNMENT. Neither party hereto may assign this Agreement without prior written approval of the other party to the assignment, or any interest therein. Subject to the above limitation, this Agreement shall be binding upon the respective parties, and their respective heirs, executors, administrators, and successors.
15. PERFORMANCE. In the event any of the terms or provisions of this Agreement have been carried out or performed prior to the date of execution hereof, it is understood and agreed that this Agreement shall nevertheless be of the same force and effect as though same had been executed by the parties prior to such performance.
16. FORCE MAJEURE. The Company shall not be obligated to operate on the Industry Track if it shall be prevented or hindered from doing by acts of God, public authority, strikes, riots, labor disputes, or any cause beyond its control.
17. INTEREST OF IOWA INTERSTATE RAILROAD, LTD. This Agreement shall inure to the benefit of and be binding upon (i) the parties of the Agreement, (ii) the successors and assigns of the parties, including without limitation, Iowa Interstate Railroad, Ltd. ("IAIS") and IAIS's successors and assigns, and (iii) the person, firm, partnership, or corporation other than IAIS that may be duly designated by IAIS or future owner of the aforesaid lines of railroad and Industry Track as the one (1) sole operator designated to conduct freight operations over the lines of railroad and the Industry Track.
18. GOVERNING LAW AND PERFORMANCE. This Agreement shall be performed by the Industry in the City of Council Bluffs, Pottawattamie County, Iowa. In the event the Industry is non-resident of the State of Iowa, said performance of this Agreement shall be deemed as doing business in Iowa, shall be deemed to constitute the appointment of the Secretary of State of Iowa to be said non-resident's true and lawful attorney upon whom may be served process under Section 617.3 Code of Iowa (1985) and any process or original notice served under said statute shall be of the same legal force and effect as of served personally upon the Industry within the State of Iowa. The parties intend this Agreement to be executed in, and interpreted, construed and enforced in accordance with the laws of the State of Iowa. (24)
19. LEGAL FEES. In case of any action, claim or any proceeding in which a dispute arises concerning this Agreement, the prevailing party shall be entitled to recover from the other party, and the other party shall pay to the prevailing party all reasonable costs, expenses and litigation expenses (including, but not limited to court costs & fees, expert expenses & fees, and attorney fees) in connection therewith.
20. PREVIOUS AGREEMENTS. This Agreement supersedes and replaces in its entirety the previous Railroad Industry Track Agreement entered into by the parties hereto dated July 19, 2011.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year herein above stated.

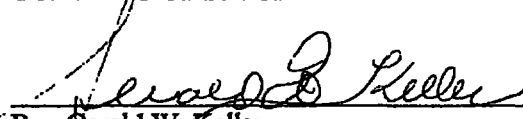
THE COMPANY AND INDUSTRY ACKNOWLEDGE THAT THEY HAVE FULLY READ ALL THE TERMS OF THIS RAILROAD INDUSTRY TRACK AGREEMENT AND ACKNOWLEDGE THAT THEY FULLY UNDERSTAND ALL THE TERMS OF THE RAILROAD INDUSTRY TRACK AGREEMENT. IN ADDITION, THE PARTIES ACKNOWLEDGE AND RECOGNIZE THAT THE SIGNATURES BELOW SIGNIFY THEIR UNDERSTANDING OF THIS LEASE AGREEMENT AND SIGNIFY THEIR INTENT TO FULLY ADHERE TO ALL THE TERMS OF THIS AGREEMENT.

IOWA INTERSTATE RAILROAD, LTD.



By: Patrick H. Sheldon
Title: Vice President of Engineering

MIDWEST WALNUT
COMPANY OF IOWA



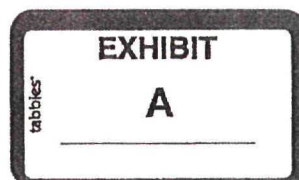
By: Gerald W. Keller
Title: Chief Operating Officer

Google maps

To see all the details that are visible on the screen, use the "Print" link next to the map.



[Report a problem](#)





1914 TOSTEVIN STREET, COUNCIL BLUFFS, IOWA, U.S.A. 51503
PHONE (712) 325-9191 FAX (712) 325-0156
TOLL FREE 800-592-5688 (800)-5WALNUT)
WEBSITE www.midwestwalnut.com
EMAIL midwalco@midwestwalnut.com

July 13, 2011

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 East Street, S.W., Room 100
Washington, DC 20423-0001

RE: Joint Petition for Exemption
Docket No. AB-33 (Sub-No. 300X), Union Pacific Railroad Company -
Abandonment, Discontinuance of Service and Overhead Trackage Rights -
in Pottawattamie County, Iowa (Great Western Industrial Lead)
Docket No. AB-414 (Sub-No. 6X), Iowa Interstate Railroad, Ltd., -
Discontinuance of Service and Discontinuance of Trackage Rights - in
Pottawattamie County, Iowa (Great Western Industrial Lead)

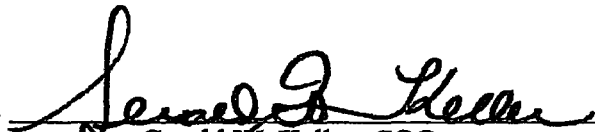
Dear Ms. Brown:

Midwest Walnut Company of Iowa ("Midwest Walnut") is aware of the aforementioned Joint Petition for Exemption to be filed with the Surface Transportation board by Union Pacific Railroad Company ("UP") and Iowa Interstate Railroad, Ltd., ("IAIS") under which (1) UP seeks to abandon and discontinue its operations over that portion of the Great Western Industrial Lead from MP 503.6 to MP 504.05 and the connector line to IAIS from MP 503.85 on the UP to MP 486.8 on the IAIS (collectively, the "Line"), and UP's Overhead Trackage Rights over IAIS' line between MP 488.0 to MP 486.80; and (2) IAIS seeks to discontinue its trackage rights over the Line.

Midwest Walnut supports the Joint Petition for Exemption and understands that Midwest Walnut's facility will continue to receive rail service from IAIS. IAIS will continue to have its direct physical connection to Midwest Walnut's facilities. Such direct physical connection will be governed by an Industrial Track Agreement between IAIS and Midwest Walnut.

MIDWEST WALNUT COMPANY OF IOWA,
an Iowa Corporation

By:


Gerald W. Keller, COO



RED GIANT Oil Company

1701 S. 3rd St. • Council Bluffs, IA 51503
Phone: 800-798-2441 • Fax: 712-323-1493



August 23, 2011

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 East Street, S.W., Room 100
Washington, DC 20423-0001

RE: Joint Petition for Exemption
Docket No. AB-33 (Sub-No. 300X), Union Pacific Railroad Company –
Abandonment, Discontinuance of Service and Overhead Trackage Rights –
in Pottawattamie County, Iowa (Great Western Industrial Lead)
Docket No. AB-414 (Sub-No. 6X), Iowa Interstate Railroad, Ltd., –
Discontinuance of Service and Discontinuance of Trackage Rights – in
Pottawattamie County, Iowa (Great Western Industrial Lead)

Dear Ms. Brown:

Red Giant Oil Company ("Red Giant") is aware of the aforementioned Joint Petition for Exemption to be filed with the Surface Transportation board by Union Pacific Railroad Company ("UP") and Iowa Interstate Railroad, Ltd., ("IAIS") under which (1) UP seeks to abandon and discontinue its operations over that portion of the Great Western Industrial Lead from MP 503.6 to MP 504.05 and the connector line to IAIS from MP 503.85 on the UP to MP 486.8 on the IAIS (collectively, the "Line"), and UP's Overhead Trackage Rights over IAIS' line between MP 488.0 to MP 486.80; and (2) IAIS seeks to discontinue its trackage rights over the Line.

Red Giant supports the Joint Petition for Exemption and understands that Red Giant's facility will continue to receive rail service from IAIS. IAIS will continue to have its direct physical connection to Red Giant's facilities. Such direct physical connection will be governed by an Industrial Track Agreement between IAIS and Red Giant.

RED GIANT OIL CO., a Nebraska Corporation

By: Sherryl Bills
Sherryl Bills, President

UNION PACIFIC RAILROAD
101 N. Wacker Dr, Rm. 1920
Chicago, Illinois 60606-1718

Mack H. Shumate, Jr. Senior General Attorney, Law Department

P 312 777 2055
F 312 777 2065

June 29, 2011

VIA E-FILE

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

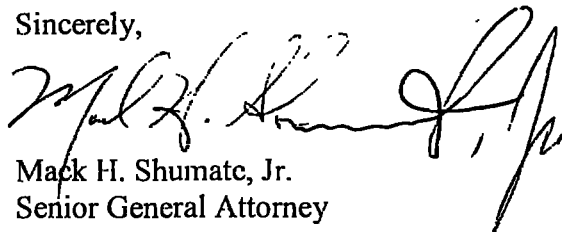
**Re: Proposed Abandonment and Discontinuance of a portion of the Great
Western Industrial Lead and Discontinuance of related Trackage Rights;
STB Docket Nos. AB-33 (Sub-No. 300X) and AB-414 (Sub-No. 6X)**

Dear Ms. Brown:

Attached for filing in the above-referenced docket is Union Pacific Railroad Company's ("Union Pacific") and Iowa Interstate Railroad, Ltd.'s ("IAIS") Combined Environmental and Historic Report prepared pursuant to 49 C.F.R. §1105.7 and §1105.8, with a Certificate of Service, and a transmittal letter pursuant to 49 C.F.R. §1105.11.

Union Pacific and IAIS anticipate filing a Petition for Exemption to Abandon the Line and Discontinue certain Union Pacific and IAIS trackage rights interests related to the Line on or after July 19, 2011.

Sincerely,



Mack H. Shumate, Jr.
Senior General Attorney

Enclosures

2011_06_29 STB Ltr to Hon. Cynthia Brown re EHR Filing.doc



UNION PACIFIC RAILROAD
101 N Wacker Dr, Rm 1920
Chicago, Illinois 60606-1718

Mack H. Shumate, Jr. Senior General Attorney, Law Department

P 312 777 2055
F 312 777 2065

June 29, 2011

VIA E-FILE

TO: SEE ATTACHED SERVICE LIST

Re: Proposed Abandonment and Discontinuance of a portion of the Great Western Industrial Lead and Discontinuance of related Trackage Rights; STB Docket Nos. AB-33 (Sub-No. 300X) and AB-414 (Sub-No. 6X)

To whom it may concern:

On or after July 19, 2011, Union Pacific Railroad Company ("UP") and Iowa Interstate Railroad, Ltd. ("IAIS") (collectively the "Applicants") expect to be filing with the Surface Transportation Board ("STB" or "Board") a Petition for Exemption seeking authority to: (1) abandon and discontinue service (UP) over the remaining portion of the Great Western Industrial Lead (the "Line") from Milepost 503.6 to Milepost 504.6, a distance of 0.45 miles; (2) abandon and discontinue service (UP) over the UP Connector Track from Milepost 503.85 on the Line to Milepost 486.8 on the IAIS Line, a distance of approximately 400 feet; (3) discontinue service (UP) of UP's Overhead Trackage Rights from Milepost 488.0 to Milepost 486.8 on the IAIS Line; and (4) discontinue service (IAIS) of IAIS' Trackage Rights from (a) Milepost 486.8 on the IAIS Line to Milepost 503.85 on the Line, a distance of approximately 400 feet and (b) from Milepost 503.6 to Milepost 504.05 on the Line, a distance of 0.45 miles, all being located in Pottawattamie County, Iowa. Attached is a Combined Environmental and Historic Report which describes the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

The Applicants are providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Section of Environmental Analysis (SEA) at the following address, and refer to the above-referenced Docket Numbers:

Surface Transportation Board
Section of Environmental Analysis (SEA)
395 East Street, S.W., Room #100
Washington, DC 20423-0001
Telephone No.: (202) 245-0296



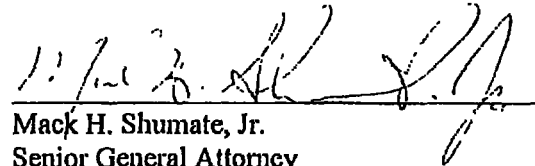
June 28, 2011

Page 2

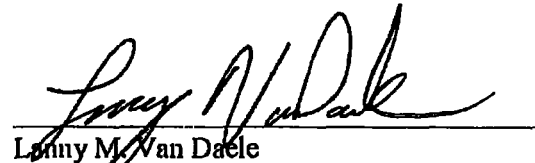
Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEA (with a copy to our representative) would be appreciated within three (3) weeks.

Your comments will be considered by the Board in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representatives directly. UP's representative in this matter is Mack H. Shumate, Jr. IAIS' representative in this matter is Lanny M. Van Daele. Our representatives may be contacted at the addresses and telephone numbers indicated below.

Yours very truly,



Mack H. Shumate, Jr.
Senior General Attorney
101 North Wacker Drive, Suite 1920
Chicago, IL 60606
312-777-2055
312-777-2065 (FAX)
Email: mackshumate@up.com



Lanny M. Van Daele
Corporate Counsel
Iowa Interstate Railroad, Ltd.
5900 6th S.W.
Cedar Rapids, IA 52404
319-298-5405
319-298-5456 (FAX)
Email: lmvandaec@iaisrr.com

State Clearinghouse (or alternate):

Mr. Steven R. McCann
Division for Community Progress
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, IA 50309

State Environmental Protection Agency:

Department of Natural Resources
Henry A. Wallace State Office Building
502 E. 9th Street
Des Moines, IA 50319-0034

**State Coastal Zone Management Agency
(if applicable):**

Not applicable.

Head of each County:

Pottawattamie County Board of Supervisors
227 South Sixth Street
County Courthouse
Council Bluffs, IA 51501-4269

**Environmental Protection Agency
(regional office):**

U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, KS 66101

U.S. Fish and Wildlife:

U.S. Fish & Wildlife Service, Region 3
One Federal Drive
Federal Building
Fort Snelling, MN 55111

U.S. Army Corps of Engineers:

U.S. Army Engineer District, Omaha
1616 Capitol Ave., Suite 9000
Omaha, NE 68102

National Park Service:

National Park Service - Midwest Region
601 Riverfront Drive
Omaha, NE 68102

U.S. Natural Resources Conservation Service:

Natural Resource Conservation Service
693 Federal Bldg.
210 Walnut Street
Des Moines, IA 50309-2180

National Geodetic Survey:

National Geodetic Survey
Edward J. McKay, Chief
Spatial Reference System Division
NOAA N/NGS2
1315 E-W Highway
Silver Spring, MD 20910-3282

State Historic Preservation Office:

State Historical Society of Iowa
Attn: R&C Coordinator
600 East Locust Street
Des Moines, IA 50319-0290



Natural Resources Conservation Service
210 Walnut Street, Room 693
Des Moines, IA 50309-2180

July 18, 2011

Mr. Mack Shumate, Junior
Union Pacific Railroad
101 North Wacker Drive, Room 1920
Chicago, Illinois 60606-1718

RE: Proposed Abandonment and Discontinuance of a portion of the Great Western Industrial Lead and Discontinuance of related Trackage Rights; STB Docket Nos. AB-33 (Sub-No. 300X) and AB-414 (Sub-No. 6X) – Pottawattamie County

Dear Mr. Shumate:

The Natural Resources Conservation Service (NRCS) has no concerns or comments regarding this project at this time.

Sincerely,

A handwritten signature in black ink that reads "Martin Adkins".

Martin Adkins
State Resource Conservationist

RECEIVED

JUL 25 2011

LAW DEPARTMENT
UNION PACIFIC RR CO.

CERTIFICATE OF SERVICE AND PUBLICATION

The undersigned hereby certifies that a copy of the foregoing Combined Petition for Exemption in Docket No. AB-33 (Sub-No. 300X) by Union Pacific Railroad Company and Docket No. AB-414 (Sub-No. 6X) by Iowa Interstate Railroad, Ltd. was served on the date indicated below by mailing a copy, first class mail postage prepaid to the following:

MTMCTEA
Attn: Railroads for National Defense
720 Thimble Shoals Blvd., Suite #130
Newport News, VA 23606-2574

Steven R. McCann
Division for Community Progress
Iowa Dept. of Economic Development
200 East Grand Avenue
Des Moines, IA 50309

U.S. Department of the Interior
National Park Service
Recreation Resources Assistance Divn.
P.O. Box 37127
Washington, DC 20013-7127

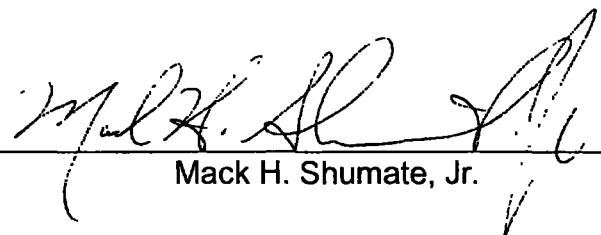
U.S. Department of Agriculture
Chief of the Forest Service
4th Floor N.W., Auditors Building
14th Street & Independence Ave., S.W.
Washington, DC 20250

The undersigned further certifies that a Notice of Abandonment and Discontinuance of Service was published one time in the county where the Line is located as follows:

County	Newspaper	Date
Pottawattamie	The Daily Nonpareil	October 2, 2011

The above newspaper is generally circulated in the county where the rail line is located. The Notice as published was in the form prescribed by the Board for a Petition for Exemption at 49 C.F.R. 1105.12.

Dated this 3rd day of October, 2011.

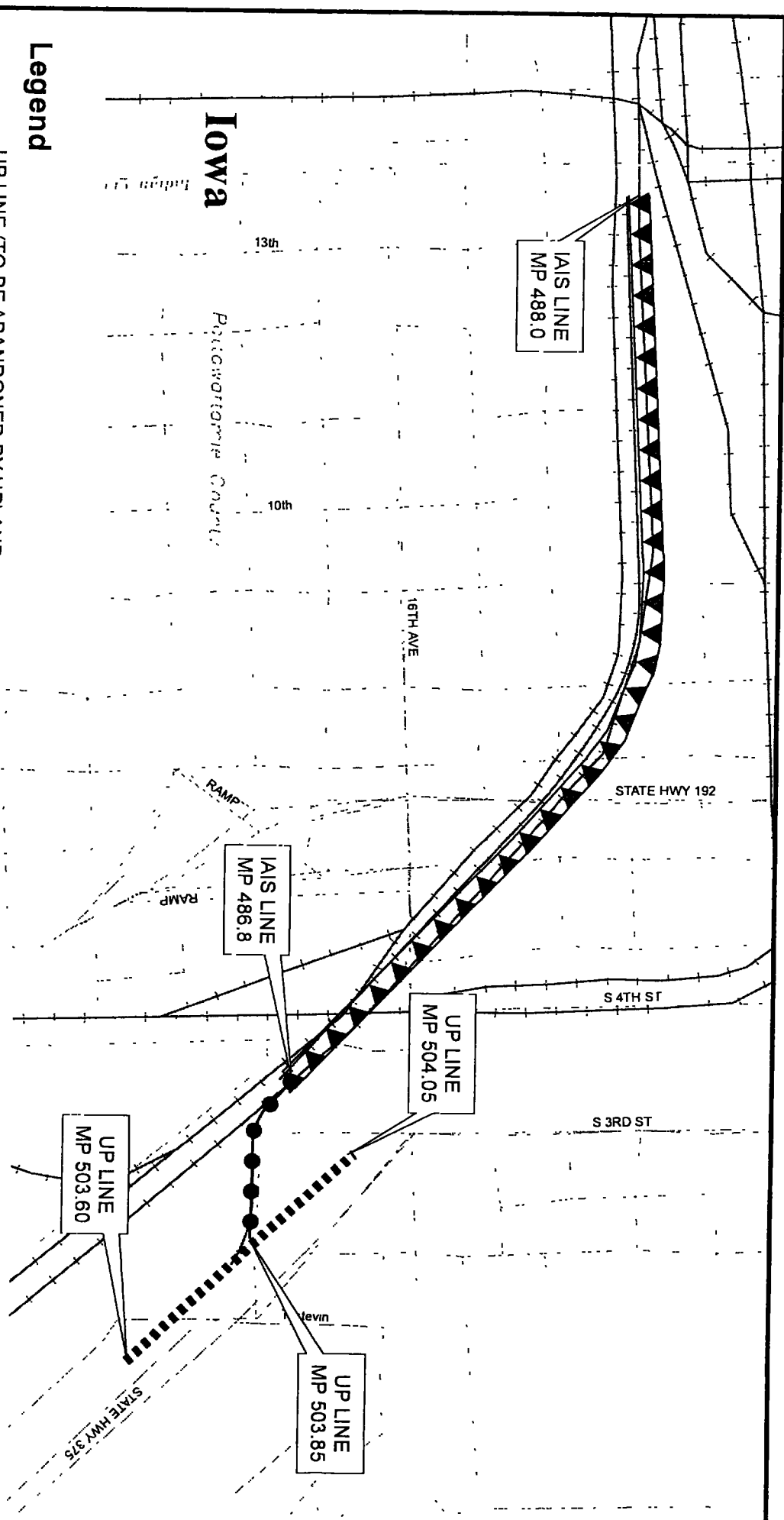

Mack H. Shumate, Jr.

NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE AND TRACKAGE RIGHTS AND ABANDON RAIL LINE

Iowa Interstate Railroad, Ltd. ("IAIS") and Union Pacific Railroad Company ("UP") give notice that on or about October 3, 2011, they intend to file with the Surface Transportation Board ("STB"), Washington DC 20423, a combined Joint Petition for Exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, permitting the abandonment of and discontinuance of service by UP and discontinuance of trackage rights by IAIS on the 0.45 mile line of railroad from M.P. 503.6 to M.P. 504.05 and of the 0.076 mile line of railroad from M.P. 503.85 on the UP system to M.P. 486.8 on the IAIS system and discontinuance of overhead trackage rights by UP over the 1.2 mile line of railroad from M.P. 486.80 to M.P. 488.0 on the IAIS system all being located in the City of Council Bluffs, Pottawattamic County, Iowa. The lines of railroad in the UP system traverse through United States Zip Code 51503 and the lines of railroad in the IAIS system traverse through United States Zip Codes 51503 and 51501.

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to OEA, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001, or by calling OEA at 202-245-0295.

Appropriate offers of financial assistance to continue rail service can be filed with the STB. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the STB. An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the STB's Section of Administration, Office of Proceedings, 395 E Street, SW., Washington, DC 20423-0001 [see 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representatives [see 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the STB's Office of Public Assistance, Governmental Affairs and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on the UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 N. Wacker Drive, Room 1920, Chicago, IL 60606; and on IAIS's representative: Lanny M. VanDaele, Esq., Corporate Counsel, Iowa Interstate Railroad, Ltd., 5900 6th, S.W., Cedar Rapids, IA 52404.



Legend

- UP LINE (TO BE ABANDONED BY UP) AND
(IAIS TO DISCONTINUE TRACKAGE RIGHTS THEREON)
- IAIS LINE (UP TO DISCONTINUE
OVERHEAD TRACKAGE RIGHTS THEREON)
- CONNECTING TRACK (TO BE ABANDONED BY UP) AND
(IAIS TO DISCONTINUE TRACKAGE RIGHTS THEREON)
- OTHER RAILROADS
- PRINCIPAL HIGHWAYS
- OTHER ROADS

THE PROPOSED TRANSACTION

LINE - UP 10th to MP 503.60
 TOTAL OF 105 MILES
 MP 503.60 to MP 503.85 (UP)
 IAIS LINE - MP 488.0 to MP 486.8
 TOTAL OF 1.2 MILES
 MP 486.8 to MP 488.0 (IAIS)

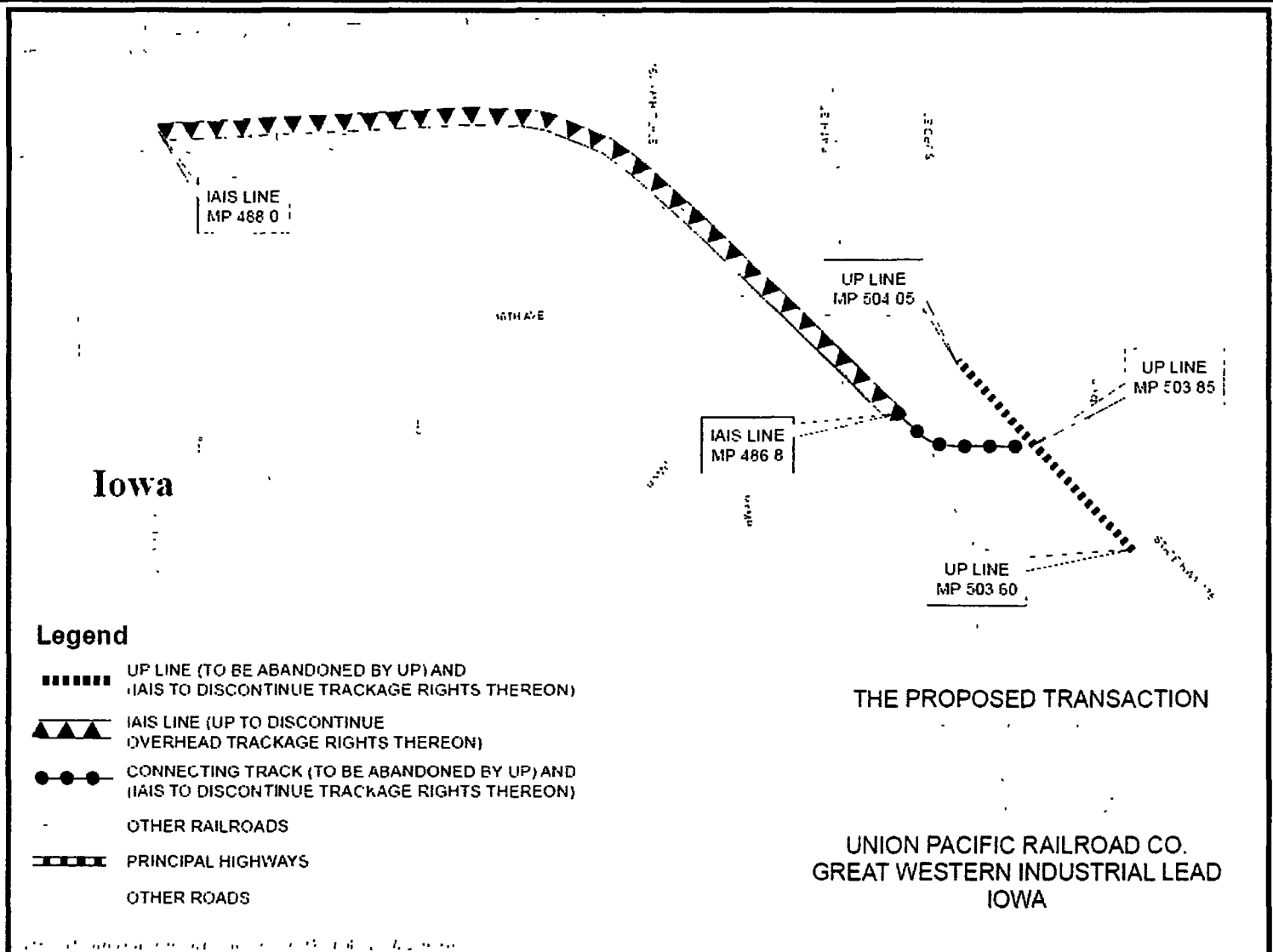
**UNION PACIFIC RAILROAD CO.
 GREAT WESTERN INDUSTRIAL LEAD
 IOWA**

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Appropriate offers of financial assistance to continue rail service can be filed with the STB. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the STB. An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the STB's Section of Administration, Office of Proceedings, 395 E Street, SW., Washington, DC 20423 0001 [see 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representatives [see 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the STB's Office of Public Assistance, Governmental Affairs and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on the UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 N. Wacker Drive, Room 1920, Chicago, IL 60606; and on IAIS's representative: Lanny M. VanDaele, Esq., Corporate Counsel, Iowa Interstate Railroad, Ltd., 5900 6th, S.W., Cedar Rapids, IA 52404.



**DRAFT FEDERAL REGISTER NOTICE
[49 C.F.R. § 1152.60(c)]**

STB Docket No. AB-414 (Sub-No. 6X)

**IOWA INTERSTATE RAILROAD, LTD.
PETITION FOR DISCONTINUANCE OF SERVICE AND TRACKAGE RIGHTS
IN POTTAWATTAMIE COUNTY, IOWA
(CHICAGO AND GREAT WESTERN INDUSTRIAL LEAD)**

Docket No. AB-33 (Sub-No. 300X)

**UNION PACIFIC RAILROAD COMPANY
PETITION FOR ABANDONMENT AND DISCONTINUANCE OF
SERVICE AND TRACKAGE RIGHTS
IN POTTAWATTAMIE COUNTY, IOWA
(CHICAGO AND GREAT WESTERN INDUSTRIAL LEAD)**

**NOTICE OF COMBINED PETITION FOR EXEMPTION FOR
ABANDONMENT AND DISCONTINUANCE OF SERVICE ON A
RAIL LINE AND DISCONTINUANCE OF TRACKAGE RIGHTS
AND DISCONTINUANCE OF OVERHEAD TRACKAGE RIGHTS**

On October 3, 2011, Iowa Interstate Railroad, Ltd. ("IAIS") and Union Pacific Railroad Company ("UP") filed with the Surface Transportation Board, Washington, D.C. 20423, a combined petition for exemption for the abandonment of and discontinuance of service by UP and discontinuance of trackage rights by IAIS on the 0.45 mile line for railroad from M.P. 503.6 to M.P. 504.05 and of the 0.076 mile line of railroad from M.P. 503.85 on the UP system to M.P. 486.8 on the IAIS system and discontinuance of overhead trackage rights by UP over the 1.2 mile line of railroad from M.P. 486.80 to M.P. 488.0 on the IAIS system all being located in the City of Council Bluffs, Pottawattamie County, Iowa. The lines of railroad in the UP system traverse through United States Zip Code 51503 and the lines of railroad in the IAIS system traverse through United States Zip Codes 51503 and 51501. The IAIS proceeding will be docketed as STB Docket No. AB-414 (Sub-No. 6X), and the UP Proceeding will be docketed as

STB Docket No. AB-33 (Sub-No. 300X). The Line does not contain federally granted rights-of-way. Any documentation in UP's or IAIS' possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by Oregon Short Line Railroad Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

Any offer of financial assistance with respect to the proposed abandonment of the Line by UP will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested parties should be aware that following abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. The EA in these abandonment proceedings normally will be made

available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

2011_09_30 Draft Federal Register Notice.doc